

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 08-11407 (BLS)
. .
SYNTAX-BRILLIAN CORPORATION, .
et al., .
Debtors. .
824 North Market Street
Wilmington, Delaware 19801
July 9, 2008
9:39 a.m.
.

TRANSCRIPT OF FIRST DAY MOTIONS HEARING
BEFORE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY COURT JUDGE

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Gregory Rayburn

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1 COURT CLERK: All rise.

2 THE COURT: Please be seated. Good morning.

3 MR. MELORO: Good morning, Your Honor.

4 MS. MITCHELL: Good morning, Your Honor.

5 MR. MELORO: May it please the Court, Dennis Meloro
6 from Greenberg Traurig on behalf of the debtors,
7 Syntax-Brillian Corporation, Syntax-Brillian SPE, Inc., and
8 Syntax Groups Corporation.

9 We're here this morning, Your Honor, for the first
10 days in the debtors' Chapter 11 cases, and we thank you for
11 making this time available.

12 THE COURT: Happy to oblige.

13 MR. MELORO: As a preliminary matter, Your Honor, I'd
14 like to make a few introductions.

15 THE COURT: Sure.

16 MR. MELORO: Behind me is Mr. Greg Rayburn. He is
17 the practice leader of FTI's interim management practice.

18 THE COURT: He's our affiant.

19 MR. MELORO: He is our affiant, exactly. And, he is
20 the debtors' interim CEO.

21 Also on the phone from FTI is Mary Ann Kaptain, she's
22 on the ground at the debtors' offices and has been working with
23 us.

24 MS. KAPTAIN: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. MELORO: To my right at counsel table is first
2 Mr. Endicott Peabody from our Boston office. You may remember
3 him from the Dan River cases.

4 THE COURT: I do.

5 MR. MELORO: Next to him is Allen Kadish, he is a
6 shareholder in our New York office.

7 MR. KADISH: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. MELORO: And to his right is Nancy Mitchell who
10 is the chair of our New York bankruptcy group.

11 THE COURT: Good morning.

12 MR. MELORO: We filed pro hac motions for everybody.

13 THE COURT: I believe I've already signed them.

14 MR. MELORO: Thank you, Your Honor. Turning to the
15 hearing, Your Honor, I would propose to proceed as follows.
16 First, Nancy Mitchell will give an overview of the debtors, why
17 we're here and where we intend to go and after that we can turn
18 to the first day motions. We'll take those slightly out of
19 order, just one out of order.

20 We have clean forms of order and what we can do, we
21 could hand them all up at the beginning or at the end.

22 THE COURT: At the end, please.

23 MR. MELORO: And, there were a few that have changes
24 and whoever is presenting the motion could walk you through the
25 red lines of those.

1 THE COURT: Okay.

2 MS. MITCHELL: Your Honor, Nancy Mitchell on behalf
3 of the Syntax debtors. Do you want to take appearances first?

4 THE COURT: No. I think I know who's here. Mr.
5 Karotkin, it's good to see you again.

6 MR. KAROTKIN: Good to see you, Judge.

7 THE COURT: Like a bad penny.

8 MR. KAROTKIN: Unfortunately, you're going to see me
9 again Friday.

10 MS. MITCHELL: And, you were here yesterday, you're
11 just hanging out?

12 THE COURT: I should plan to be out.

13 MR. KAROTKIN: That's why he said I was a bad penny.

14 THE COURT: Why don't we go ahead.

15 MS. MITCHELL: Your Honor, I had proposed to give
16 background on the debtors and on the cases, to give you a sense
17 of where we're going and then I think we will proffer briefly
18 Mr. Rayburn's background and then move his declaration into
19 evidence. That should provide a good evidentiary record for
20 the hearing.

21 THE COURT: Okay. I have had an opportunity to
22 carefully review the declaration.

23 MS. MITCHELL: Okay. Well, let me just start by
24 saying that these cases actually started, really, back in the
25 fall of 2007 when the Syntax-Brillian debtors were negatively

1 impacted by a variety of different circumstances.

2 The debtors themselves are in the business of
3 designing and distributing televisions. They are HDTV's in the
4 tier 2 market. That is, essentially lower cost HD televisions
5 to retailers like -- big box retailers like Target. The
6 business has been a good business, it's the Olevia brand if
7 Your Honor is familiar with HD televisions.

8 The debtors business was structured, though, so that
9 they were dependent on the supply chain in China and Taiwan.

10 THE COURT: It seems like the business, the debtors'
11 business, is primarily as a brand.

12 MS. MITCHELL: It is primarily as a brand.

13 THE COURT: Okay. Because it's, I gather and I want
14 to make sure I understand it, that it's basically a virtual
15 company. The debtor coordinates outsourcing and production of
16 the components and then even assembly of the components.

17 MS. MITCHELL: Yes.

18 THE COURT: And, right now, according to the
19 affidavit, anyway, at the final stages the debtor is actually
20 arranging for direct shipping back and forth.

21 MS. MITCHELL: The business as currently constructed,
22 yes, but the business was never a manufacturing business, they
23 were always dependent on their supply chain to manufacture and
24 produce the televisions, that is correct.

25 THE COURT: Right.

1 MS. MITCHELL: And, that supply chain also owns the
2 research, development and technology arm of the debtors which
3 is a very important --

4 THE COURT: And, so that supply chain, is basically,
5 is that DigiMedia and Kolin?

6 MS. MITCHELL: Well, Kolin was the original supply
7 chain partner.

8 THE COURT: Okay.

9 MS. MITCHELL: And they did, at the time, own
10 DigiMedia which is the technology part of the organization.
11 Subsequent to the agreement with the purchaser, the proposed
12 purchaser, the proposed purchaser took control of DigiMedia
13 which is the technology component. Kolin is no longer a
14 significant supplier to the company, but were very important in
15 the development and growth of the company.

16 THE COURT: Okay.

17 MS. MITCHELL: In the fall of 2007, the debtors
18 borrowed \$250 million in financing from the prepetition lender
19 Silver Point and CitiBank. And, pretty much virtually
20 immediately after that loan was put in place, there were a
21 series of things that happened that really hurt the debtors'
22 business. The biggest was, they had contracted with the
23 Chinese government to supply televisions to the Olympics and
24 the Chinese government elected not to take those televisions,
25 leaving the debtor with a \$60 million receivable that was in

1 their borrowing base that was not collectible and 20 some
2 thousand televisions that were outfitted for the China
3 marketplace that could then not be resold in the United States
4 without being refitted.

5 THE COURT: And I understand that there's an issue
6 about what happened to those televisions or how they were
7 disposed of.

8 MS. MITCHELL: Well, we know where the televisions
9 are, at least the ones that haven't been sold, they're at
10 Kolin. We're in a dispute with Kolin and, therefore, can't get
11 them back. They're not saleable in the U.S. market anyway
12 because they're not fitted for the U.S. market.

13 THE COURT: Right.

14 MS. MITCHELL: This resulted in a liquidity shortage
15 because we were out of formula with Silver Point and the way
16 the debtors' business had operated, they had been supporting
17 their supply chain overseas. So, when they didn't have money,
18 they couldn't support the supply chain, Kolin particularly
19 suffered difficulties and it was difficult for the business to
20 operate.

21 The relationship between the company and the
22 suppliers also resulted in the SEC opening an informal
23 investigation. There have been derivative and class action
24 lawsuits filed by the shareholders. The accountants raised a
25 series of questions about the debtors' financial statements

1 resulting in the debtors having to ultimately issue a press
2 release saying you couldn't rely on their historical financial
3 statements and just to make it all really good, the tier 2
4 market has become substantially more competitive because Sony
5 has actually announced that they're going to be competing in
6 the tier 2 market.

7 So, the debtors found themselves early 2008, in a
8 really difficult situation, and then obviously also had some
9 internal issues that they had to deal with. The debtors have
10 done a series of things to change that prior to filing -- the
11 management team is more or less completely changed, the CEO,
12 Mr. James Li is no longer with the company and was replaced --
13 originally brought in FTI as chief operating officer and then
14 was replaced by Mr. Rayburn in April, as interim CEO. And, the
15 CFO resigned in, I believe, January and was replaced by a new
16 CEO. We also brought in an independent audit committee, the
17 head of the audit committee was an independent director who was
18 brought in early 2008 and the audit committee actually launched
19 an independent investigation of what was going on inside the
20 company, using Heron Consulting, Greenberg and McDermott Will &
21 Emery, as their representatives. And through that process, the
22 debtors also began to identify options for their business.

23 THE COURT: Well, actually, let me ask a question
24 before we get onto the debtors' options.

25 MS. MITCHELL: Sure.

1 THE COURT: There's a reference that -- you've just
2 gone through the officers that have left the company and there
3 was a reference that directors have left the company as well.

4 MS. MITCHELL: Yes. Just before the bankruptcy, all
5 of the directors resigned for Syntax Groups and Syntax-Brillian
6 Corporation. All of the directors resigned except for Mr.
7 Garnreiter. Mr. Garnreiter was the independent director and
8 head of the audit committee that we brought in, and so he is
9 now the only director of those two debtors.

10 The SPE debtor, which owns title to some property in
11 Taiwan, has to have three directors because of the way it's set
12 up, so Mr. Garnreiter is a director, Mr. Pugliese who acts as
13 independent director and was actually the independent director
14 that was put into SPE by the lenders, and then the third member
15 of that board of directors is Dave Chavoustie and he is one of
16 the previous directors of the company and we've just left him
17 in place because we needed a third director.

18 THE COURT: Okay.

19 MS. MITCHELL: In evaluating the various
20 possibilities for the debtors business, we worked through a
21 variety of options and we detailed a lot of that in the
22 affidavit which you've obviously spent a lot of time reading.
23 The debtors basically, their business model doesn't work as
24 currently constituted. Their cost of goods is too high and
25 they don't control their technology.

1 THE COURT: Why is there cost of goods so high
2 compared to competitors?

3 MS. MITCHELL: Well, I'm not probably the best person
4 to answer that, Mr. Rayburn would probably be better at that,
5 but my understanding is that the way that they manufacture the
6 televisions traditionally, they actually manufactured a more
7 high quality product than they needed for the tier 2 market.
8 The Kolin television is apparently quite a good television.
9 And, they were dealing with it by getting a price protection
10 from Kolin and I think the idea was to own the U.S. market and
11 then they were going to raise prices. It didn't really work,
12 but that was the plan.

13 So, right now, what we're dealing with is a situation
14 in which we were trying to find a buyer for the company and
15 since the company's business model doesn't work, you might
16 imagine that that would be difficult. You already identified
17 it's a brand business. So, in order to create value, the FTI
18 guys, Mr. Rayburn, went out and talked to some of the suppliers
19 of the company who could solve the technology problem and who
20 could solve the cost of goods problem and we have been able to
21 put together a stalking horse purchaser which was filed. It's
22 obviously not up for today, except for scheduling purposes,
23 with one of our suppliers. Not a Kolin related supplier.

24 THE COURT: TCV, correct?

25 MS. MITCHELL: Yes, TCV. So, our plan for these

1 cases, we're going to try to run the sale process in a way that
2 will maximize value. We don't expect that we will have a
3 different buyer because if there's going to be a different
4 buyer it will be someone who is also in the same position as
5 TCV to solve those problems, but the process is designed to try
6 to identify those people and we have discussed with some of
7 those people the possibility of doing a deal.

8 There are also non-debtor subsidiaries, Vivitar, and
9 its subsidiaries, it's a camera business that are not being
10 sold as part of the proposed purchase. Those will be either
11 liquidated or sold. We also intend to work with the secured
12 creditors and the committee to the extent we have a committee,
13 to put together quickly a liquidating plan that we can file and
14 get on file and get approved. The idea being to put the
15 litigation and causes of action that exist as a result of all
16 the things that I outlined before into a liquidating trust and
17 then aggressively pursue that litigation because a lot of the
18 recovery for creditors here is going to have to come from
19 litigation.

20 I expect, Your Honor, just to be candid, that these
21 cases are going to be very difficult. This is a situation in
22 which our prepetition lender is looking at a substantial
23 discount on the basis of the operating assets that they have.
24 There's obviously significant litigation here that's going to
25 have to be pursued and so I expect them to be difficult cases,

1 but we do believe that this is the best way to keep an
2 operating business, which keeps people employed, vendors,
3 suppliers and customers have someone to do business with and we
4 also believe it maximizes the value that is in the estate for
5 the benefit of the various parties.

6 THE COURT: Let me ask you a couple questions before
7 we turn --

8 MS. MITCHELL: Yes, sir.

9 THE COURT: What's the company doing right now? As I
10 understand it, it has a handful of employees left in Tempe,.
11 correct?

12 MS. MITCHELL: Yes.

13 THE COURT: And that's primarily senior management
14 types, general counsel, CEO.

15 MS. MITCHELL: The CFO, the general counsel and most
16 of the accounting staff.

17 THE COURT: Okay. And, then you have employees in a
18 place called City of Industry?

19 MS. MITCHELL: Yes. City of Industry, California.
20 It's a lovely spot.

21 THE COURT: It's a real place?

22 MS. MITCHELL: It's a real place.

23 THE COURT: It sounds like it's out of a Marvel
24 comic.

25 MS. MITCHELL: There's actually a story about that if

1 you're interested. The City of Industry was named because they
2 wanted to create an industrial zone in LA and they decided to
3 name it City of Industry to try to attract industry into the
4 area, when LA was expanding, and I know that because I spent
5 way too much time there reading the things in the hotel.

6 THE COURT: Okay. I appreciate that. You've got 109
7 employees, what are they doing?

8 MS. MITCHELL: Well, they do things like -- well,
9 they have -- there's the general office staff, they do payroll,
10 et cetera, all that, but they also do sales, interface with the
11 customers.

12 THE COURT: And your customers are retailers,
13 correct?

14 MS. MITCHELL: Target. Yes, Target, Office Depot.
15 And then they also do the sort of typical stuff, you know, they
16 manage the IP which is an important part of this business.
17 They manage the shipping, which is fixed, all that stuff.

18 THE COURT: Okay. There's a reference in the
19 affidavit at paragraph 23, I guess, and 24 to a collection of
20 joint ventures. One is China South and then in Brazil and in
21 Japan, and the debtor has partial ownerships, I assume. Are
22 they national entities that own the other parts of them?

23 MS. MITCHELL: I actually don't know. We can find
24 out, Your Honor, but I don't know. Those are being purchased
25 by the purchaser and my understanding is, they don't have any

1 significant value.

2 THE COURT: Okay. And, as I understand it, we're
3 going to turn to the financing or the company's capital
4 structure, but the company in fairly short, in fairly recent
5 history, has raised by the affidavit, paragraph 33, \$328
6 million in equity?

7 MS. MITCHELL: More or less, Your Honor.

8 THE COURT: Okay. Which includes a \$20 million piece
9 from Teco, which is the subject of litigation.

10 MS. MITCHELL: Yes, sir.

11 THE COURT: Is that pipe transaction?

12 MS. MITCHELL: I believe so.

13 THE COURT: Okay.

14 MS. MITCHELL: I don't know that.

15 THE COURT: Okay. Well, it sounds like one. One
16 other thing that I want to make sure that we address and we
17 don't need to cover it today, you've asked for a waiver on the
18 consumer privacy ombudsman.

19 MS. MITCHELL: Yes.

20 THE COURT: I'm not sure that's a today issue.
21 You're going to probably wind up talking with the trustee about
22 that. I mean, there's not a lot of very helpful case law on
23 that issue, but I want to make sure that we do cover it at some
24 point and it's not before me today.

25 MS. MITCHELL: We have discussed it with the United

1 States Trustee already, we've talked about a couple of
2 different alternatives including trying to address it through
3 the asset purchase agreement and we're going to be continuing
4 that. I think that will probably be the subject of the next
5 hearing.

6 THE COURT: Okay. Let me see if I have any other
7 background questions. Has the stock been D listed yet?

8 MS. MITCHELL: It is being D listed on the 17th of
9 July, assuming that we don't challenge it and we're obviously
10 not going to challenge it.

11 THE COURT: Okay. And I think that covered most of
12 the general background questions that I had. Before we turn to
13 the first days, what you're asking for today on the sale
14 process is for scheduling bid procedures and ultimately the
15 sale process going out.

16 MS. MITCHELL: Yes, Your Honor.

17 THE COURT: With closing scheduled, at least on your
18 proposed time frame, for some time in early September, right?

19 MS. MITCHELL: I believe the drop dead date under
20 the asset purchase agreement is September 2nd. And we did work
21 out dates, I think, with your court clerk on the schedule.

22 THE COURT: Okay, good. All right. Okay, shall we
23 turn to the motions?

24 MS. MITCHELL: Yes, Your Honor. I actually wanted to
25 -- I was going to proffer Mr. Rayburn's background, although if

1 you've read the affidavit, maybe you'd rather not and I could
2 just enter the declaration into evidence.

3 THE COURT: I've read the affidavit. I've read the
4 affidavit, does anyone oppose the entry of the declaration into
5 evidence? Obviously, Mr. Rayburn is present in the courtroom
6 if anyone wishes to cross examine him on anything. He's
7 certainly available.

8 MS. MITCHELL: Yes.

9 THE COURT: But I'm satisfied with one, the
10 background and two, the affidavit. So, in the absence of
11 objection, I'll accept it into evidence. Very well.

12 MS. MITCHELL: Thank you, Your Honor. Okay, we're
13 going to start, if it's all right, Your Honor, with item 13 on
14 the agenda, which is the DIP motion and then move to item 5 on
15 the agenda, which is the wage motion and then I would ask your
16 indulgence if you could enter those orders, assuming that
17 you're so inclined to do so when we're done, so that we can get
18 the payroll paid this morning and then we'll go through the
19 rest of the agenda.

20 THE COURT: Okay.

21 MS. MITCHELL: Okay, we'll turn the podium over to
22 Mr. Peabody.

23 MR. MELORO: Nancy, did you want to do joint
24 administration?

25 MS. MITCHELL: Oh, I think we're going to do joint

1 administration first.

2 THE COURT: I regard that as routine. Are there any
3 objections? Mr. Kenney is that all right with you?

4 MR. KENNEY: That's fine, Your Honor.

5 THE COURT: Very good. Good morning, sir.

6 MS. MITCHELL: All right, Mr. Peabody.

7 THE COURT: Financing

8 MR. PEABODY: Good morning, Your Honor, may it please
9 the my name is Kit Peabody of Greenberg Traurig, I represent
10 the debtors, the Syntax debtors in connection with this matter.

11 THE COURT: Okay.

12 MR. PEABODY: Just as a brief summary for this, I'd
13 like to just present the motion of the debtors authorizing the
14 debtors to enter into a DIP financing agreement and use of cash
15 collateral. I'd like to give you a brief summary of the DIP
16 and following that I'd like to offer a proffer of Mr. Rayburn's
17 testimony into evidence specifically with regard to the DIP, in
18 lieu of his actual testimony.

19 And, then we've had some changes to the interim order
20 and I'd like to ask lenders' counsel to go over those changes
21 with you at that time. And then, of course --

22 THE COURT: And that's the point where you throw him
23 under the bus?

24 MR. PEABODY: Exactly.

25 THE COURT: Okay.

1 MR. PEABODY: That's my plan.

2 THE COURT: Okay.

3 MR. PEABODY: And then I'll turn it to the U.S.

4 Trustee if he has any issues and then go from there.

5 THE COURT: Okay. You may proceed.

6 MR. PEABODY: Thank you. Your Honor, the general
7 terms of the DIP are as follows. The maximum amount under the
8 DIP facility is 23 million, however, on an interim basis, the
9 debtor is prepared to borrow and the lenders have agreed to
10 lend up to 7.5 million between now and the final hearing.

11 The term of the DIP is designed to get the debtors
12 through the sale process, through the completion. The maturity
13 date would be September 2nd, which would correspond with the
14 closing of the asset purchase agreement, however, there is a
15 maturity date prior to that, in the event that we do not get to
16 a final hearing or final order prior to, I believe the July
17 30th date at 11 a.m. The interest rate --

18 THE COURT: It expired at 11 a.m.?

19 MR. PEABODY: No, sorry, the hearing is at 11 a.m.
20 The interest rate under the facility is a base rate plus 8
21 percent but no more than 15.5 percent. Assuming there's no
22 event of default, the debtors can exercise an option to have
23 the interest accrue at a Libor rate, plus 9 percent but, again,
24 no greater than 13.5 percent and the base rate is a defined
25 term pursuant to the credit agreement.

1 The debtors have negotiated a budget with the lenders
2 and that budget is designed to carry the debtors through the
3 sale process, it's a nine week budget. It accounts for
4 collections and payments going out and it specifically accounts
5 for the debtors' collections and payments through the interim
6 period as well.

7 The DIP facility does contain a roll up feature,
8 however, this roll up feature only comes into play after the
9 final hearing. There's no roll up between now and the final
10 hearing date.

11 THE COURT: And the roll up is 15 of the 23, right?

12 MR. PEABODY: That's correct, Your Honor.

13 THE COURT: Okay.

14 MR. PEABODY: The DIP credit agreement grants
15 priority liens to the post petition lenders and the prepetition
16 lenders have consented to being subordinate to that. And, the
17 remaining terms of the facility include things such as events
18 of default, reps and warranties and covenants that you might
19 generally find in connection with facilities like this, in this
20 particular instance.

21 That basically is the general terms. I don't know if
22 Your Honor has any questions, I'd be happy to answer them at
23 this time.

24 THE COURT: I will, but why don't you make your
25 record with the proffer and then we'll turn to the terms of the

1 the order.

2 MR. PEABODY: Thank you. If called to testify, Mr.
3 Rayburn would state as follows. Mr. Rayburn would testified
4 that he has reviewed and is familiar with the terms and
5 conditions of the proposed use of cash collateral and
6 Debtor-in-Possession financing. He would testify that he
7 believes after consultation with counsel, that the relief
8 requested complies with the applicable provisions of the
9 bankruptcy code, that such has been proposed in good faith and
10 that the debtors, acting through their officers, directors, and
11 professionals, conducted themselves in a manner that complies
12 with the applicable law in relation to the formulation and
13 negotiation of the requested use of cash collateral and the
14 Debtor-in-Possession financing.

15 Mr. Rayburn participated directly in communications
16 and negotiations with the debtors, secured lenders, vendors,
17 customers and other and worked closely with the debtors
18 personnel who handled business operations and financial
19 management, as well as with debtors outside counsel and other
20 advisors.

21 Mr. Rayburn would testify that it is his
22 understanding that during the last year Syntax-Brillian
23 Corporation has primarily financed its business operations
24 through various loan facilities and financing agreements
25 detailed more fully in his declaration. Mr. Rayburn would

1 testify that an immediate need exists for the debtors to obtain
2 post petition financing and to use cash collateral in order to
3 continue the operation of their business. Without the use of
4 such funds, the debtors' trade creditors will cease to provide
5 goods and services to the debtors on credit and the debtors
6 will not be able to pay their payroll and other direct
7 operating expenses and obtain goods and services needed to
8 carry on their businesses.

9 The ability of the debtors to finance their
10 operations and the availability to the debtors of sufficient
11 working capital and liquidity is vital to the confidence of the
12 debtors' employees, customers and major suppliers and to the
13 preservation and maintenance of the going concern values of the
14 debtors' estates.

15 He also will testify that the debtors' next payroll
16 funding is due today, for distribution to employees tomorrow,
17 July 10th. He would testify that the proposed post petition
18 lenders have represented that they are willing to permit the
19 debtors to borrow funds and to use cash collateral only in
20 amounts and on the conditions provided for in the motion and in
21 the interim order, including on a roll up basis, which roll up
22 will occur under a final order, not between this hearing and
23 the final hearing.

24 Mr. Rayburn would testify that the debtors believe
25 that under the circumstances the terms and conditions set forth

1 in the motion and in the interim order are fair and reasonable
2 for the use of cash collateral granting adequate protection and
3 obtaining Debtor-in-Possession financing.

4 Mr. Rayburn, if called to testify, would state that
5 prior to the petition date the debtors, through the FTI interim
6 management team, sought out other professional sources of
7 financing, recognizing that virtually all of their assets are
8 subject to the senior security interest in favor of their
9 prepetition lenders and that it is unlikely that the debtors
10 would succeed in priming the prepetition lenders liens.
11 Debtors are unable to obtain credit allowable as an
12 administrative expense or on any other terms.

13 The debtors engaged in good faith in arms length
14 negotiations with the prepetition lenders. Based on these
15 efforts, Mr. Rayburn would testify that the debtors entered
16 into the proposed post petition credit agreement.

17 Mr. Rayburn would also testify that without the DIP
18 financing and use of cash collateral as negotiated, the debtors
19 operations will come to a halt, sales would stop and employees
20 would leave, making the debtors' assets exponentially less
21 valuable and frustrating debtors' efforts in Chapter 11.

22 Mr. Rayburn would testify, therefore, that the
23 authorization for use of cash collateral and authorizing the
24 DIP financing is in the best efforts of the debtors' estates
25 and their creditors. Mr. Rayburn would testify that the

1 debtors' prepetition lenders assert and the debtors agree that
2 all, or virtually all of the debtors' cash generated by the
3 business in the ordinary course, constitutes cash collateral.
4 The debtors' use of cash collateral is necessary to maintain
5 the value of their bankruptcy estates in order to achieve a
6 sale, which is proposed to close by September 2nd, 2008.
7 Absent the use of cash collateral, the debtors will be unable
8 to operate the business in a manner necessary to maintain and
9 maximize the value of their assets and they will suffer
10 immediate and irreparable harm.

11 He would testify that as adequate protection for the
12 use of cash collateral, the debtors will be providing the
13 prepetition lenders with replacement liens on all their assets,
14 subject and subordinate to the liens being granted to the
15 proposed post petition lenders.

16 Cash collateral will be used to pay expenses that are
17 set forth in the debtors' nine week budget, in accordance with
18 the interim order and the final order. The budget enumerates
19 expenses including, but not limited to, employee payroll and
20 other benefits, rent, corporate overhead, inventory purchases,
21 professional fees and other expenses related to operating the
22 business. Debtors have negotiated the budget that shows the
23 debtors projected receipts and expenditures during the nine
24 week period from the petition date to September 2nd, 2008.
25 The budget may be updated throughout the nine week period

1 pursuant to the terms of the proposed post petition credit
2 agreement by agreement with the lenders.

3 He would further testify that the debtors'
4 prepetition lenders under the credit agreement, consent to the
5 use of their cash collateral, as negotiated and provided in the
6 interim order.

7 Mr. Rayburn would testify the Debtor-in-Possession
8 financing is necessary over and above the use of cash
9 collateral and that the post petition credit agreement was
10 entered into after considerable negotiation. The post petition
11 credit agreement also contains representations, warranties and
12 events of default customarily found in the credit agreements of
13 this nature.

14 Mr. Rayburn would testify that the proceeds of the
15 loans, under the proposed post petition credit agreement will
16 be used to a) pay fees, costs and expenses and other
17 obligations owing to the agent and the lenders in accordance
18 with the proposed post petition credit agreement and related
19 documents; b) to fund ongoing working capital requirements of
20 the debtors; c) to pay other fees, costs and expenses,
21 including without limitation certain carve out expenses and d)
22 to fund certain amounts to DigiMedia Technology Company LTD.,
23 in the aggregate amount not to exceed 3.5 million, and to fund
24 certain amounts fo the TCV Technology Company Limited in an
25 aggregate amount not to exceed 2 million as requested in the

1 critical vendor motion.

2 Mr. Rayburn would testify that approval of the use of
3 cash collateral and the proposed post petition credit agreement
4 will provide the debtors with immediate and ongoing access to
5 cash and borrowing availability to pay their current and
6 ongoing operating expenses, including post petition wages and
7 salaries and utility and vendor costs. Unless the expenses of
8 the operations are paid in the interim, the debtors will be
9 forced to immediately cease operations which would likely a)
10 result in irreparable harm to the business, deplete going
11 concern value and quash the opportunity for a sale and c)(sic)
12 jeopardize the debtors' ability to maximize the value of their
13 assets. The credit provided under the proposed post petition
14 credit agreement and the use of cash collateral will enable the
15 debtors to continue to satisfy their vendors, service their
16 customers, pay their employees and operate the business in an
17 orderly and reasonable manner, to preserve and enhance the
18 value of their assets for the benefit of all stakeholders. As
19 a result the timely approval of the relief requested in the
20 motion is imperative.

21 He would further testify that the debtors' liquidity
22 needs can be satisfied only if the debtors are immediately
23 authorized to use cash collateral and borrow under the proposed
24 post petition credit agreement, and to use the proceeds to fund
25 their operations. The debtors have been unable to procure

1 financing in the form of unsecured credit allowable as an
2 administrative expense or in exchange for the grant of a super
3 priority administrative expense claim pursuant or secured by a
4 junior lien on the property of the estate.

5 The debtors have tried but have not been able to
6 obtain post petition financing or other financial
7 accommodations from any alternative prospective lender or more
8 favorable terms and conditions than those which approval is
9 sought in the motion.

10 Mr. Rayburn would testify that the debtors have
11 exercised sound business judgment in determining the post
12 petition credit agreement facility is appropriate and has
13 satisfied the legal prerequisites to enter into a financing
14 pursuant to the terms of the proposed post petition financing
15 agreement. The terms of the proposed post petition financing
16 agreement are fair and reasonable and are in the best interests
17 of the debtors' estates. He would also testify that because
18 substantially all of the debtors' assets are encumbered and the
19 debtors have been unable to procure the required funding absent
20 granting the proposed priming liens, super priority claims and
21 liens that the debtors submit that the circumstances of these
22 cases require the debtors to obtain financing on a priming,
23 senior, super priority administrative basis and, accordingly,
24 the proposed post petition credit agreement reflects the
25 exercise of the debtors' sound business judgment.

1 Mr. Rayburn would testify that the terms and
2 conditions of the proposed post petition credit agreement are
3 fair and reasonable and were negotiated extensively by well
4 represented independent parties in good faith and at arms
5 length. As a result, the post petition lenders and all
6 obligations incurred under the post petition credit agreement
7 should be accorded the benefits of Section 364(e) of the
8 bankruptcy code governing good faith.

9 He would also testify that the prepetition lenders
10 have agreed to the debtors' use of cash collateral and the
11 debtors' priming of their liens in accordance with the proposed
12 post petition credit agreement, in consideration of the
13 adequate protection provided under the interim order and the
14 final order, and the other terms thereof. Accordingly, the
15 adequate protection proposed in the motion to protect the
16 prepetition lenders' interests and their prepetition collateral
17 is fair and reasonable and sufficient to satisfy the
18 requirements of 363(c)(3) and (e) of the bankruptcy code.

19 Mr. Rayburn would testify that the automatic stay
20 modifications requested in the motion are ordinary and standard
21 features of post petition financing facilities and the debtors'
22 business judgment are reasonable and fair under the present
23 circumstances.

24 He would further testify that interim relief is
25 necessary as the debtors have an urge and immediate need for

1 cash to continue to operate. Currently, the debtors do not
2 have sufficient funds with which to operate the business on an
3 going basis. Absent authorization from the bankruptcy court
4 to obtain use of cash collateral and secured credit on an
5 interim basis, pending a final hearing on the motion, debtors
6 will be immediately and irreparably harmed. The use of cash
7 collateral and the availability of interim loans under the
8 proposed post petition credit agreement will provide necessary
9 assurance to the debtors' vendors, employees and customers in
10 their ability to meet their near term obligations. Failure to
11 meet these obligations and provide these assurance likely would
12 have significant negative impact on the value of the business,
13 to the detriment of all parties in interest. Accordingly, the
14 interim relief requested is critical to preserving and
15 maintaining the going concern value of the debtors.

16 In conclusion, Mr. Rayburn would, therefore, testify
17 that each of the requirements of Section 363 and 364 of the
18 bankruptcy code have been satisfied in this case. As such, on
19 behalf of the debtors, Mr. Rayburn will request the motion be
20 approved on an interim basis.

21 THE COURT: Okay. Does anyone wish to cross examine
22 Mr. Rayburn?

23 (No audible response)

24 THE COURT: Very well, I'll accept the proffer.

25 MR. PEABODY: Thank you, Your Honor.

1 THE COURT: Okay. Shall we turn to the order?

2 MR. PEABODY: That would be fine. I'm not sure if
3 Your Honor has a copy, a black line copy of the order?

4 THE COURT: I don't.

5 MR. PEABODY: May I -- can I bring one up to you? At
6 this time, I'd like to ask lenders' counsel to come up and
7 discuss the order with you.

8 THE COURT: I haven't even started yet, come on.
9 That's fine. Mr. Karotkin, how are you?

10 MR. KAROTKIN: Where's the bus, it depends. Fine,
11 thank you, Your Honor, how are you? Could I just make one or
12 two quick points of clarification?

13 THE COURT: Absolutely.

14 MR. KAROTKIN: I think that Mr. Peabody covered
15 pretty much everything. Just to note a couple of things. He
16 did note that there is a use of cash collateral. The interim
17 amount of the lending under the DIP, the 7.5 million is in
18 addition to the use of cash collateral during the interim
19 period. The adequate protection obligations, as described in
20 the order include, among other things, the actual amount of
21 cash collateral used during the interim period, of course, and
22 thereafter if a final order is entered and the proposed order
23 does provide for the payment of current interest on the amount
24 of cash collateral -- the amount of the prepetition lenders'
25 cash collateral used during the period, at the rates and at the

1 times set forth in the DIP loan agreement.

2 And, I think that you noted, Your Honor, that the DIP
3 facility does expire and the use of cash collateral does expire
4 in the event a final order is not entered by, I think July
5 30th. Not, 11 a.m., but July 30th, and that order, the
6 conditions are that that order must be acceptable to the DIP
7 lenders, including the roll up, just so the record is clear.

8 THE COURT: Okay. Why don't we --

9 MR. KAROTKIN: Now one other -- I'm sorry.

10 THE COURT: Sure.

11 MR. KAROTKIN: One other thing. We have -- Mr.
12 Kenney, of course, was provided a copy of the order. He and I
13 had a conversation last evening. He had certain suggested
14 changes. I believe that the order that you have in front of
15 you is acceptable to Mr. Kenney incorporating the changes that
16 he requested and he's obviously here, and he can either confirm
17 what I said, or say I don't know what I'm talking about.

18 THE COURT: Okay. Why don't we roll through -- I've
19 taken a look at the black line, but I have marked up the
20 version that's been given to me in the binder, and it looks
21 like there aren't enormous changes in the black line, so why
22 don't we just work from the version that I have in my binder.

23 So, as I understand the economics of this, and I want
24 to make sure I understand, there's a proposed -- it's \$5.5
25 million in critical vendor payments that are going to come out

1 of the new money that's coming in, right?

2 MR. KAROTKIN: To the extent you authorize that, yes.

3 THE COURT: Okay. Right. That's been requested.

4 MR. KAROTKIN: That's within the budget, yes.

5 THE COURT: It's built into the budget.

6 MR. KAROTKIN: Yes.

7 THE COURT: So, that in terms of new money, I realize
8 the debtor will have cash collateral, but in terms of new money
9 it'll be \$2 million for the interim period available to the
10 debtors under the DIP, assuming that the 5.5 goes out the door.

11 MR. KAROTKIN: Yes, sir.

12 THE COURT: Okay. I just want to make sure I
13 understand the math. Okay. I have some comments that are,
14 perhaps, stylistic. Some are substantive and some are just
15 questions I have. Why don't we turn to Page 11, paragraph --
16 decretal 2. Oh, decretal paragraph 1 has granted in its
17 entirety and I'd like the phrase, in its entirety struck.

18 MR. KAROTKIN: Okay.

19 THE COURT: I think the motion is granted as provided
20 in the order. The next question is, and it's actually a
21 comment. If there are any changes, as we talk about paragraph
22 2, there's changes to the proposed order and the terms of the
23 financing, and then there's a caveat that notice of any
24 increase, basically any material change, change in the
25 economics, has to be provided with notice.

1 MR. KAROTKIN: Yes, sir.

2 THE COURT: What I want -- that structure is fine
3 with me, but what I do want is, any changes that are made, I
4 want notice provided. To the extent that there's a change in
5 the economic terms as identified in Romanette 1 through
6 Romanette 4, that's fine, they get notice and a chance to
7 object. But I think it's appropriate that they get notice of
8 any changes. I don't -- I'm not suggesting that every change
9 requires court approval or an opportunity to object, and I
10 certainly don't want to be part of the process, but they ought
11 to know if there are changes to the documents.

12 MR. KAROTKIN: Okay.

13 THE COURT: As I understand it, Section 506(c), the
14 waiver, the requested waiver will be effective only upon entry
15 of the final order.

16 MR. KAROTKIN: Yes, sir, I believe that's on Page 14.

17 THE COURT: It is. Okay.

18 MR. KAROTKIN: Yes.

19 THE COURT: That's fine. Obviously, as you know you
20 have a substantial burden to carry under local rules. Those
21 are protections that are not customarily lightly granted, so, I
22 will hear a committee on those issues at the final, but it's
23 not a today issue.

24 MR. KAROTKIN: Yes, sir.

25 THE COURT: Okay. Turning to Page 15 and carryover

1 onto Page 16, I see that there's a \$50,000, basically,
2 sub-limit or cash collateral available for use for purposes of
3 investigating, but not initiating or prosecuting, right?

4 MR. KAROTKIN: Yes, sir.

5 THE COURT: Okay. My standard comment on these at
6 the outset is, I view this as a committee issue and you, I'm
7 sure you expect that you're going to hear from a committee on
8 things like the carve out, sufficient funding and sufficient
9 monies for an investigation, so --

10 MR. KAROTKIN: I have no -- I'm sorry,

11 THE COURT: -- I'm not going to fight that fight with
12 you, but, you know, Judge Walsh has said, has long said that
13 funding for a committee is part of the cost of doing business
14 in a Chapter 11, so that's a discussion that you're going to
15 have, but the fact that I may approve this order with this
16 language, certainly, isn't dispositive, but I think that the
17 numbers are appropriate. I view it as -- it's almost
18 effectively a stakeholder, or a placeholder.

19 Paragraph 20 -- I'm sorry, Page 20, paragraph 16, I
20 just flagged this because this is something that Mr. Kenney
21 usually identifies, which is, you've identified an examiner
22 with expanded powers and our friends at the Office of the
23 United States Trustee don't believe that even exists, so they
24 don't want it in the form of order.

25 MR. KAROTKIN: He didn't mention it.

1 THE COURT: But --

2 MR. KAROTKIN: I thought he was more careful than
3 that.

4 THE COURT: We've caught him.

5 MR. KAROTKIN: Are you requesting that a change be
6 made, sir?

7 THE COURT: I'm indifferent.

8 MR. KAROTKIN: So, am I.

9 THE COURT: Okay. Let me ask a question. On
10 paragraph 18, I'm not sure how it works, on Page 21, talking
11 about, upon a termination event, Romanette 1, the debtors can't
12 borrow any more, that's fine, I understand that, in Romanette
13 2, the debtors shall deposit in an account designated by the
14 agent an amount equal to 105 percent of the face value of all
15 outstanding letters of credit. How would they do that, they
16 don't have any money?

17 MR. KAROTKIN: Well, they do have access to -- I
18 think it may be irrelevant, I don't think there are letters of
19 credit anyway.

20 THE COURT: Well, there are LC's outstanding with
21 Target, right?

22 MS. MITCHELL: If those get assigned, though to --
23 those get assigned to TCV, Your Honor, so --

24 THE COURT: Well -- can you get to the podium. And
25 it may not be an issue, but I will say that -- I mean, I

1 certainly don't want to set up a system where the debtor -- set
2 up the debtor to fail, and then while they may be assigned to
3 TCV, that won't have occurred while this order remains extant.

4 MS. MITCHELL: Your Honor, I don't believe that we
5 have any letters of credit for which cash collateral has been
6 requested. The cash collateral would have to come from, or the
7 cash to collateralize the letters of credit which -- it's a
8 fairly standard term, but it would have to come from borrowings
9 under the post petition facility and there is no provision for
10 doing that, that I'm aware of in the budget.

11 MR. KAROTKIN: I think at that point they're in
12 default anyway. I'm not sure it matters.

13 THE COURT: So, this is just more of a default.

14 MR. KAROTKIN: I think so. Because it is upon a
15 termination event when --

16 THE COURT: Well, I think I --

17 MS. MITCHELL: Well, this is under the post petition
18 financing.

19 MR. KAROTKIN: Yes.

20 MS. MITCHELL: Yes. Under the post petition
21 financing, what we would normally do with letters of credit is,
22 you would require the borrower to actually post the 105 percent
23 in order to -- we won't be able to do it, so we'll be in
24 default, but we're already in default at that point anyway.

25 THE COURT: I think I'd like this stricken unless you

1 can explain and we can talk about it in the final, but it
2 sounds like it's not going to happen. I certainly don't want
3 any suggestion that the debtor is in contempt for failing to
4 pay money it doesn't have.

5 MR. KAROTKIN: Okay. We can -- I'm told by my
6 attorney that we can strike it.

7 THE COURT: Fair enough.

8 MR. KAROTKIN: So, we'll delete the one little (i).

9 THE COURT: Okay. I think it's two little (ii's).

10 MS. MITCHELL: It's two little --

11 MR. KAROTKIN: I understand that. Just to -- just
12 the one little (i) reference.

13 THE COURT: Yes, Romanette 2. Yes.

14 MR. KAROTKIN: Since there's no longer a two (ii).

15 THE COURT: Right. I see in paragraph 20, on the
16 carryover to Page 23, you're providing three business days
17 written notice.

18 MR. KAROTKIN: That was changed.

19 THE COURT: Oh, has it changed to five or what's it
20 changed to?

21 MR. KAROTKIN: Yes. It should be in the one you
22 have.

23 THE COURT: Okay. I haven't -- I'm not comparing my
24 black line versus the --

25 MR. KAROTKIN: Oh, I'm sorry. It has been changed to

1 five.

2 THE COURT: Okay. But that notice period doesn't
3 apply, that only applies to A, B and C earlier in the
4 paragraph. And, I don't disagree that the notice period
5 doesn't necessarily have to apply to the rights and remedies
6 under Subsection (d), which is at the bottom of paragraph 22,
7 or Page 22, but when we get to paragraph (e) it says, you can
8 take any other actions or exercise any other rights or remedies
9 permitted under this order. As I read that, then, there's no
10 notice required for whatever rights and remedies you can
11 identify that don't fall strictly within A, B and C. And, one
12 of the issues I have with these kinds of things is always, if
13 there's a termination event, I want people to know.

14 MR. KAROTKIN: I think this is clear. This is not --
15 I didn't make this up, it was actually in another order you
16 signed that --

17 THE COURT: That doesn't mean anything.

18 MR. KAROTKIN: It says other than the rights
19 described in clause A to the extent they might be deemed
20 remedies in the respective collateral. So, I think with that
21 caveat, it makes it clear. And, other than with respect to
22 freezing any deposit accounts --

23 THE COURT: Okay, well let me make an observation and
24 the fact that it was in a prior order doesn't really weigh one
25 way or the other.

1 In the event of an event of default, and you know
2 this, your client needs to be very careful about the remedies
3 that it exercises with or without notice.

4 MR. KAROTKIN: We know that. Yes, sir.

5 THE COURT: And, I see this as a catchall that
6 doesn't provide them a world of -- it doesn't provide them
7 enormous protection, there are things that they can and should
8 be able to do to guard their flank in the event of a default
9 and that they should be able to do promptly. But this seems to
10 me to be fairly broad, while perhaps conditioned by A, B and C
11 but --

12 MR. KAROTKIN: I understand.

13 THE COURT: Okay. What does paragraph 21 mean? I've
14 read it a couple of times.

15 MR. KAROTKIN: This is a continuation of the
16 remedies.

17 THE COURT: Do I understand this correctly, that
18 paragraph 21 means, if the post petition lenders exercise their
19 rights, then the prepetition lenders have the right to exercise
20 their rights, is that what it boils down to?

21 MR. KAROTKIN: No.

22 THE COURT: Okay. What's it mean? What is it?

23 MR. KAROTKIN: If they are exercising -- if rights
24 are being exercised, pursuant to the provisions of this order
25 or the other post petition financing documents, this goes on to

1 explain -- I'm looking at the black line at the top of Page 24,
2 it says, "they shall have the right without further action or
3 approval of this Court to exercise the remedies as they shall
4 elect in their discretion, subject to the provision of the
5 applicable notice," which we've just talked about, in the
6 preceding -- so it's a continuation of the remedy section and
7 then the next sentence goes on to say that no holder of a lien
8 primed by this order, which is really the same people anyway --

9 THE COURT: Right, that part I get. The no holder
10 of a lien I get. I don't --

11 MR. KAROTKIN: And, then it basically -- it says --

12 THE COURT: I see that first sentence which goes on
13 for what has to be ten lines. Unless I'm misreading it, I
14 think it's a tautology, I think if they exercise their
15 remedies, they exercise their remedies. I mean, if you parse
16 through it, you don't get to the verb until line six.

17 MR. KAROTKIN: It says, if at any time they're
18 exercising their rights under the order and the other documents
19 or receiving remittances hereunder, including foreclosing, they
20 shall have the right without further action of this Court, to
21 exercise such remedies as to all or part of the collateral, as
22 the agent shall elect in their sole discretion.

23 So, basically, it says, they can determine which
24 collateral to exercise rights as to in their order, and proceed
25 in that fashion.

1 THE COURT: Oh. So, this is a -- does it relate to
2 marshaling, then?

3 MR. KAROTKIN: If you look at the last paragraph,
4 I'm sorry the last sentence, that then ties it in with
5 marshaling.

6 THE COURT: Right. No event, right, that I saw
7 earlier. Okay. But as I read this it says, "If the post
8 petition secured parties, the agent, lenders, shall at any time
9 exercise any of their respective rights and remedies, hereunder
10 ..."

11 MR. KAROTKIN: And, it says, "including without
12 limitation foreclosing, or selling ..."

13 THE COURT: -- going on, ..."including without
14 limitations foreclosing, then the post petition lenders shall
15 have the..."

16 MR. KAROTKIN: -- "they have the right without
17 further action to exercise such rights and remedies as to all
18 or such part of the collateral as they shall elect in their
19 sole discretion, subject to providing the adequate notice."

20 THE COURT: Okay.

21 MR. KAROTKIN: And then it ties it in with the
22 marshaling.

23 THE COURT: Okay. I think that could be more clearly
24 worded. Page 27 of my order, it's paragraph 27.

25 MR. KAROTKIN: Yes.

1 THE COURT: It's a reference that I don't think I've
2 seen before, that they deem -- for control for purposes of a
3 collection of UCC sections. Are these liened or blocked
4 accounts?

5 MR. KAROTKIN: Yes.

6 THE COURT: Okay. All right, I understand.
7 Paragraph 31 on my Page 29. The validity, enforceability shall
8 not be affected by any finding, regarding the prepetition
9 liens.

10 MR. KAROTKIN: Right.

11 THE COURT: Isn't that subject to the roll up, or
12 subject to the call back? For example, if we enter the final
13 order subject to the investigation and the liens are deemed
14 invalid, then the roll up gets unwound, right?

15 MR. KAROTKIN: Yes.

16 THE COURT: Because you're paying prepetition. It's
17 secured --

18 MR. KAROTKIN: I understand, Your Honor, that in the
19 event it's determined we're totally unsecured, that you can
20 fashion an appropriate remedy.

21 THE COURT: Okay.

22 MR. KAROTKIN: I understand that.

23 THE COURT: Okay. Paragraph 32, carryover onto Page
24 30, I'd like the invoices to go to the U.S. Trustee and counsel
25 for the committee prior to payment. It can have a five day or

1 an eight day or a ten day notice period, but the standard
2 practice is that notice is provided, they don't need to file
3 fee applications, but this condition that the invoices don't
4 get circulated until after payment is something I haven't seen
5 before and I'm not inclined to embrace.

6 MR. KAROTKIN: I'm just --

7 THE COURT: You see where I am?

8 MR. KAROTKIN: I'm in the paragraph, I'm just looking
9 for it.

10 THE COURT: Oh, toward the bottom, or actually, we're
11 in the middle of the paragraph. There's a sentence that says,
12 notwithstanding the foregoing --

13 MR. KAROTKIN: I see it.

14 THE COURT: -- the debtor shall promptly after
15 payment of invoices, provide copies of same to the U.S. Trustee
16 and the committee.

17 MR. KAROTKIN: Okay.

18 THE COURT: And the standard practice with this is
19 that it goes to the UST and the committee, typically they'll
20 have a short period, it's usually not an issue in any event,
21 but I don't want the circulation to be conditioned upon prior
22 payment. That's not something that I've seen before.

23 MR. KAROTKIN: And -- okay, so you want us to give
24 prior notice.

25 THE COURT: Yes. And however you want to articulate

1 that, however many days, that they get notice, et cetera, and
2 I'm fine with the debtors paying pretty promptly, but I don't
3 think that the way this is phrased, the circulation doesn't
4 occur, I mean, the debtors could hold onto the invoices for
5 awhile, pay them and then circulate them, but it sounds like
6 they're actually precluded from circulating them prior to
7 payment and I don't think that's appropriate. So, however you
8 want to word that.

9 MR. KAROTKIN: What if we did this, notwithstanding
10 the foregoing, the debtors shall provide -- delete promptly
11 after the payment of any such fees and disbursements --

12 THE COURT: Fine.

13 MR. KAROTKIN: -- shall provide copies of same to the
14 U.S. Trustee and counsel for any committee at least five days
15 prior to payment thereof.

16 THE COURT: Okay.

17 MR. KAROTKIN: By the debtors. Does that work?

18 THE COURT: Yes, that's fine.

19 MR. KAROTKIN: Thank you.

20 THE COURT: Paragraph 33, at the very bottom.

21 MR. KAROTKIN: Yes.

22 THE COURT: Is a sentence that says, under no
23 circumstances shall any Chapter 11 plan --

24 MR. KAROTKIN: Right.

25 THE COURT: I think that those are -- I don't want

1 that sentence in there. I'll consider it in the context of a
2 final, but I think that those are rights, I don't think that
3 they can confirm a plan over your opposition that doesn't pay
4 your allowed secured claims. And, so, perhaps, I'm telling you
5 that without signing it, but the phrasing -- I simply don't
6 know how this case will turn out, I don't know enough and I
7 wouldn't want circumstances to be overtaken by language that
8 says under no circumstances. I think as a practical matter you
9 have all of the remedies to either stop the case cold, or
10 preclude confirmation of a plan that you don't accept,
11 assuming, again, that your liens are valid. But this kind of
12 language, I think, is a little over the top.

13 MR. KAROTKIN: For purposes of this order should we
14 say, subject to entry of the final order, comma, or do you want
15 it deleted?

16 THE COURT: Why don't we delete it.

17 MR. KAROTKIN: Okay.

18 THE COURT: Paragraph 34 deals with dismissal of
19 these cases and provide that I shall retain jurisdiction. I'm
20 not sure that I can do that. We can do it one way, or another
21 and I think I know which you'll prefer. We can say, to the
22 extent permissible under applicable law, the Court shall retain
23 jurisdiction, but I'm not sure that I do retain jurisdiction.

24 MR. KAROTKIN: Okay. Do you want to add that right
25 after the two little (ii's)?

1 THE COURT: Yes.

2 MR. KAROTKIN: To the extent -- it says to the extent
3 permitted by applicable law, comma, this Court --

4 THE COURT: Yes.

5 MR. KAROTKIN: Okay.

6 THE COURT: Okay. And you've fixed the timing for
7 investigation to, I see 60 and 75 days?

8 MR. KAROTKIN: You're on paragraph?

9 THE COURT: 37. Yes, I think it's 37(b).

10 MR. KAROTKIN: Paragraph 37(b) has been changed to 60
11 and 75.

12 THE COURT: Okay.

13 MR. KAROTKIN: As well as in the other one relating
14 to CIT.

15 THE COURT: Right. Paragraph 40, as it relates to
16 CIT and the factors, ownership and factored accounts. Is CIT
17 the factor?

18 MR. KAROTKIN: Pardon me?

19 THE COURT: Is CIT the factor?

20 MR. KAROTKIN: Yes, sir.

21 THE COURT: And I realize CIT is separately
22 represented, but here's the question that I have. Paragraph 40
23 says, "notwithstanding the commencement of these cases and
24 notwithstanding the prepetition termination of the factoring
25 arrangement, the factors' ownership interest in the factored

1 accounts is hereby ratified and reaffirmed." I have no record
2 for confirming that. I don't believe I have the factoring
3 agreement. I certainly haven't reviewed it, if it's somewhere
4 in here, and I'm not sure that on this record I could do that.
5 And to be honest, given that it's a canceled agreement, I'm not
6 sure what it means for me to say that it's ratified and
7 reaffirmed.

8 MR. KAROTKIN: Can I have counsel for CIT address
9 that?

10 THE COURT: Sure.

11 MR. MATZAT: Good morning, Your Honor, Rosanne
12 Matzat, Hahn & Hessen for CIT. I'm not sure how we solve your
13 question with respect to the record before you here today.
14 There are sections of the affidavit which has been admitted
15 into evidence, that do go to the point and the terms of the CIT
16 agreement.

17 THE COURT: What does it mean that I ratify and
18 reaffirm it?

19 MS. MATZAT: Well, what we're trying to say in that
20 paragraph, basically, is our ownership interest in the
21 accounts, which was validly sold to us prepetition, are --
22 maybe confirmed is a better word than ratified and reaffirmed.
23 I believe actually the ratified and reaffirmed language is a
24 hangover, when we weren't sure whether we were terminating it
25 pre or post and, therefore, we were going to act under it,

1 notwithstanding the fact that it might be considered
2 terminated.

3 If Your Honor is more comfortable with the confirming
4 the idea that I own it, because I bought it prepetition and
5 paid for it under the terms of that factoring agreement, that
6 might be a better choice of words than ratification.

7 THE COURT: I think what would be appropriate at
8 least for this order, is that as I read subparagraphs (b)
9 through (e), they do confirm that you have all of your rights,
10 that the debtor will continue to perform and that -- about how
11 proceeds are remitted. I think it's appropriate for this order
12 that subsection (a) be stricken. I don't know what it means, I
13 don't know what affect it would have. Certainly not -- it's
14 not being assumed because it's been canceled, it's not being
15 rejected because it's been canceled. So, ratified and
16 reaffirmed are -- well, reaffirmed is a term of art under the
17 code, but I don't think you want to get into that.

18 So, I think that you're protected in terms of your
19 rights and your business relationships by subsections (b)
20 through (e), on a going forward basis. I've read the
21 affidavit, I understand how the relationship works, but I am
22 concerned because I don't know what subsection (a) means and
23 I'm not prepared to enter it.

24 MS. MATZAT: I'm fine with that, for the purposes of
25 this order, Your Honor, subject to us either clarifying or

1 convincing you otherwise at the final hearing.

2 THE COURT: That's fine.

3 MS. MATZAT: Thank you.

4 THE COURT: And I'm happy to consider it at the final
5 if there's a more fulsome record or if there's a particular
6 issue that needs to be addressed and you can present it to me
7 with the agreement and any other points you wish to make at the
8 final.

9 MS. MATZAT: That's fine, sir.

10 THE COURT: Very good, thank you.

11 MR. KAROTKIN: May I anticipate your last point?

12 THE COURT: Which is what?

13 MR. KAROTKIN: Maybe I shouldn't.

14 THE COURT: What did I miss?

15 MR. KAROTKIN: Hum?

16 THE COURT: What did I miss?

17 MR. KAROTKIN: No. We deleted paragraph 44.

18 THE COURT: My last point. Okay. Because I don't
19 think I've seen that before.

20 MR. KAROTKIN: Yeah, you made me delete it previously
21 in another matter.

22 THE COURT: Good for me. Okay.

23 MR. KAROTKIN: But Mr. Kenney got to me first on that
24 one, Your Honor. We have to give him some credit.

25 THE COURT: Okay. That covers the issues that I have

1 based upon comments from the U.S. Trustee as well as changes
2 and modifications that we've walked through right now. Does
3 anyone else wish to be heard regarding the debtors' request for
4 DIP financing?

5 (No audible response)

6 THE COURT: Okay.

7 MR. KAROTKIN: We will need dates put in and I guess
8 logically -- you want to address --

9 MS. MITCHELL: Your Honor, Nancy Mitchell on behalf
10 of the debtors. I think the dates were -- we talked to your
11 clerk about July 30th at 11 a.m. for the final hearing --

12 THE COURT: That's fine.

13 MS. MITCHELL: -- and July 21st as the objection
14 deadline? Is that right?

15 THE COURT: Mr. Kenney, have you had an opportunity
16 to schedule a formation meeting?

17 MR. KENNEY: We have not done that yet, Your Honor.

18 THE COURT: Okay. What day did you say for the
19 objection?

20 MS. MITCHELL: It would be July 21st for the
21 objection deadline, but really with the July 30th hearing, if
22 Your Honor is comfortable pushing it back a little bit, that's
23 fine, too, given the speed, I don't know --

24 THE COURT: Why don't we go with the 23rd for
25 objections at 4 p.m., and I'm confident you know this, but I

1 expect that a committee, once appointed, will ask for an
2 extension and I will expect that you'll give the something of
3 an extension.

4 MS. MITCHELL: Okay. I'm surprised by that, yes.

5 THE COURT: Okay.

6 UNIDENTIFIED MALE SPEAKER: Excuse me -- wait, wait.

7 MS. MITCHELL: The first date on the service, we're
8 going to serve it tomorrow, by tomorrow. July 10th.

9 THE COURT: That's fine, why don't you give yourself
10 until Friday just in case there's a glitch in the mailing. I
11 don't want you to be in violation of the order.

12 MS. MITCHELL: July 11th. Okay.

13 UNIDENTIFIED FEMALE SPEAKER: And the other dates?

14 MS. MITCHELL: Your Honor, we do need to try to get
15 this order entered this morning because of the payroll issue.

16 THE COURT: Do you have it?

17 MS. MITCHELL: I've marked it up, I think I need Mr.
18 Karotkin -- I've marked up the black -- well, it's not the
19 black line, but the clean version of the black line. If I can
20 --

21 THE COURT: Why don't we do this. You wanted to turn
22 to the financing -- or the --

23 MS. MITCHELL: The wage order next.

24 THE COURT: -- the wages order. Why don't we turn to
25 that. The parties -- anybody who wants to look at the marked

1 up form of order can look at it while we're dealing with that
2 and we'll be able to get that on the docket and you may also
3 need your cash management order if you need to deal with your
4 bank accounts.

5 MS. MITCHELL: Fair point. We should probably take
6 cash management third, or fourth.

7 THE COURT: All right. Well, let's do this. Before
8 we turn to the wages motion, again, I note that there are no
9 other parties that wish to be heard. We have made a number of
10 revisions that will be reflected in a marked up form of order,
11 but based upon the record before me, and accepting the
12 affidavit and proffered testimony of Mr. Rayburn, I am
13 satisfied that the debtors have carried their burden under
14 Bankruptcy Rule 4001 and Bankruptcy Sections 361, 362, 363, and
15 364, for purposes of obtaining a interim use of cash collateral
16 and so, I will enter the order as soon as the revised form of
17 order is submitted.

18 MS. MITCHELL: Thank you, Your Honor.

19 THE COURT: Shall we turn to wages?

20 MS. MITCHELL: We'll turn to wages, I'll turn the
21 podium over to Mr. Meloro.

22 THE COURT: Okay. Mr. Meloro.

23 MR. MELORO: Your Honor, again, Dennis Meloro from
24 Greenberg Traurig on behalf of the debtors. We take the wage
25 motion now. By way of background, and additional detail is

1 contained in the motion and the Rayburn affidavit, as of the
2 petition date the debtors had approximately 109 employees and
3 three independent contractors and of these employees,
4 approximately 62 are hourly, the rest are salaried employees.

5 And by this motion, Your Honor, the debtors are
6 seeking authority to pay and/or honor certain prepetition
7 claims of employees and the independent contractors, including
8 wage claims, salaries, commissions, vacation time, expense
9 reimbursement, claims or payments pursuant to certain benefit
10 plans, the debtors maintain benefit plans such as medical,
11 dental, vision, prescription plans, a 401(k) plan and similar
12 plans and also to pay prepetition withholding obligations.

13 THE COURT: Okay. As I understand it from paragraph
14 nine of your motion, the employee compensation is limited to
15 the statutory cap to ten nine fifty, is that correct?

16 MR. MELORO: Yes, Your Honor.

17 THE COURT: Does the company anticipate that there
18 are any employees that are owed in excess of that for wages or
19 salaries?

20 MR. MELORO: No, Your Honor.

21 THE COURT: Okay. Mr. Kenney, did you have any
22 observations or comments on the debtors proposed motion?

23 MR. KENNEY: No, Your Honor. I worked through that
24 with counsel yesterday.

25 THE COURT: Very good. Okay. Are there any changes

1 to the proposed form of order?

2 MR. MELORO: No, Your Honor. May I approach?

3 THE COURT: Sure. Thank you. Okay. Based upon the
4 record before me, I will approve the motion and in so ruling I
5 will note for purposes of Bankruptcy Rule 6003, that the debtor
6 has established -- has carried its burden that it suffers the
7 risk of immediate and irreparable harm in the absence of the
8 relief requested in the motion. And I've noted this before,
9 while this relief is fairly standard in Chapter 11 cases in
10 this jurisdiction, the fact that it has become standard does
11 not change or minimize the importance of payment of employee
12 wages and I am satisfied, again, that the debtors have carried
13 their burden that the payment of prepetition and post petition
14 wages and compensation is necessary and appropriate. I will
15 enter the order.

16 MR. MELORO: Thank you, Your Honor.

17 THE COURT: Okay, I've signed that and as soon as we
18 get the DIP financing order we will get that on the docket, as
19 well as -- shall we turn to cash management?

20 MR. MELORO: Sure, Your Honor.

21 THE COURT: Okay.

22 MR. MELORO: Prepetition, Your Honor, the debtors
23 maintained approximately ten bank accounts, each of those is
24 identified in the motion. These accounts are part of a highly
25 automated cash management system, the debtors monitor and track

1 the cash in those accounts.

2 By this motion, we're seeking authority to maintain
3 their existing cash management system, continued use of their
4 business forms and checks. And, also an interim waiver of the
5 Section 345 and the U.S. Trustee guidelines.

6 As set forth in the motion, and the Rayburn
7 affidavit, Your Honor, this will ensure the debtors smooth
8 transition into Chapter 11, minimize any disruption going
9 forward.

10 THE COURT: Okay. Mr. Kenney, did you have any
11 issues with this motion?

12 MR. KENNEY: Your Honor, I discussed the issue with
13 the debtor and we're going to work through those during the
14 interim period.

15 THE COURT: Okay. When you say the issues, are you
16 referring to Section 345 (b) issues and collateralization?

17 MR. MELORO: Yes, Your Honor. We're going to try to
18 have Premier Bank sign --

19 THE COURT: Sorry, I just want to make sure that we
20 get you.

21 MR. KENNEY: For the record, Mark Kenney for the
22 United States Trustee, Your Honor. We're already in touch with
23 Premier Bank to see about having them sign a uniform depository
24 agreement to collateralize the accounts and I believe that the
25 debtors said they're going to -- whatever money they do have in

1 that Merrill Lynch account is de minimis, they're going to move
2 it out of there and if we get those issues resolved, there
3 probably is no need for a 345 waiver. And if they can't
4 resolve it in the interim period, they can either move for an
5 extension or move for permanent waiver.

6 THE COURT: Collateralize. Okay. All right. Does
7 anyone else wish to be heard regarding the debtors cash
8 management motion?

9 (No audible response)

10 THE COURT: Okay. I will enter the order. Again,
11 the relief requested is fairly standard in this jurisdiction
12 and is appropriate in a case of this size, to ensure the
13 debtors' smooth entry into Chapter 11.

14 MR. MELORO: May I approach, Your Honor?

15 THE COURT: Please. Okay, I have signed that order.

16 MR. MELORO: Thank you, Your Honor. And we can now
17 return to the, I guess, the previous order that we have
18 proposed.

19 THE COURT: The DIP financing or the other motions?

20 MR. MELORO: The other motions, and thank you for
21 taking those out of order, Your Honor,

22 THE COURT: Okay.

23 MR. MELORO: Next on the agenda is the debtors'
24 application to retain Epiq Bankruptcy Solutions, LLC, as claims
25 noticing and balloting agent. I would note that debtors have

1 submitted the affidavit of Daniel McElhinney in support of the
2 application. Among the services Epiq will provide is serve as
3 notice agent, claim services and balloting services in
4 connection with the plan and disclosure statement. The debtors
5 believe they have over 200 creditors and the appointment of a
6 claims agent is required under local rules. We believe that
7 the appointment of Epiq is in the best interest of the estates
8 and unless Your Honor has any questions.

9 THE COURT: I don't have any questions, I'd just like
10 to confirm that this engagement of Epiq is acceptable to the
11 Office of the U.S. Trustee.

12 MR. KENNEY: Your Honor, again, Mark Kenney for the
13 United States Trustee. Your Honor, I had requested that a no
14 quit provision be added to the order and I have not seen a
15 black line order, so I don't know if Epiq had agreed to that.
16 I imagine they would --

17 THE COURT: You're saying, no quit, that means they
18 can't suspend their services without order of the court?

19 MR. KENNEY: Exactly, Your Honor.

20 THE COURT: Okay.

21 MR. KENNEY: And in exchange for that, if there is a
22 payment dispute, they can get an expedited hearing.

23 THE COURT: Sure.

24 MR. KENNEY: This is fine, Your Honor.

25 THE COURT: Okay. Let me make an observation. This

1 doesn't always come up, but I do find that it is an appropriate
2 provision in a retention of the claims agent. As a practical
3 matter, I think it's how it works out most of the time, but
4 clearly the administration of one of these cases would suffer
5 mightily if there were an issue with the -- or if the claims
6 agent stopped providing the services. We're certainly here to
7 hear any payment or servicing disputes that they may have. But
8 I agree with you, they're an agent of the clerk of the
9 bankruptcy court, and they shouldn't suspend their services
10 absent an order of the court. So, next time you talk to him,
11 tell him I said so.

12 Okay, I'll take the rest of the orders in the stack
13 once --

14 MR. MELORO: And Your Honor, we'll hang those up at
15 the end, Your Honor.

16 THE COURT: Okay. Once we get them, but, does anyone
17 else wish to be heard regarding the retention of Epiq?

18 (No audible response)

19 THE COURT: All right. Based upon the record before
20 me, I do note that our local rules require the engagement of a
21 claims agent and a balloting agent in a case with a sufficient
22 number of creditors, this case meets those standards, and in
23 the absence of opposition from the U.S. Trustee or any other
24 party, I'll enter the order.

25 MR. MELORO: Thank you, Your Honor. Next on the

1 agenda is the sales and use tax motion and in connection with
2 the normal operation of their businesses, the debtors pay an
3 assortment of sales, use, franchise and other taxes, to
4 federal, state and local taxing authorities. The debtors also
5 pay certain regulatory fees to, again, federal, state and local
6 regulatory authorities. The debtors estimate that
7 approximately \$4,000 of unpaid sales taxes are outstanding as
8 of the petition date, approximately \$26,750 of regulatory fees,
9 and 32,000 in personal property taxes are outstanding.

10 By this motion, the debtors are seeking authority to
11 pay these taxes and fees and in the aggregate it's not expected
12 to exceed \$80,000. As set forth in the motion and the Rayburn
13 affidavit, payment of these taxes will help the debtors avoid
14 serious disruption in their businesses and corresponding
15 diminution of value of the estates which would result.

16 THE COURT: Okay. Does anyone else wish to be heard
17 regarding the debtors sales and use tax motion?

18 (No audible response)

19 THE COURT: Okay. I will grant the motion. Again,
20 with respect to much of the relief that's requested, it is
21 standard in this jurisdiction, and with respect to the trust
22 fund taxes that are identified in the motion, substantial case
23 law supports the proposition that those monies are not even
24 property of the debtors' estate.

25 To the extent that there are other obligations that

1 are being paid that are not truly trust fund taxes, I'm
2 satisfied that the debtors have carried their burden under
3 Bankruptcy Rule 6003, particularly in light of the disruption
4 that would be wrought upon the debtors' sale efforts and
5 reorganization attempts, by audits from various small
6 jurisdictions.

7 And so, I will enter the order and I will note that
8 part of the reason that I'm entering the order is that I regard
9 the amounts in controversy as relatively modest, but it seems
10 to me that these motions started out as true trust fund taxes
11 in most cases and there are categories that are slipping into
12 them, the regulatory fees, and the personal property taxes,
13 neither of which are properly characterized as trust fund
14 expenses. There are certainly disruptions that may occur to a
15 debtors' operations from failure to pay regulatory fees and
16 trust fund taxes, which disruptions would grossly outweigh the
17 amount that needs to be paid. But some of these, I think that
18 there are additional expenses that are creeping into these
19 motions. Again, here, it's not a significant sum, but it's an
20 issue that, you know, in a proper case might merit a more close
21 analysis.

22 But, again, based upon the record before me, I'm
23 satisfied and I will enter that order.

24 MR. MELORO: Thank you, Your Honor.

25 THE COURT: Utilities?

1 MR. MELORO: Utilities is next, Your Honor. In the
2 ordinary course of their business, the debtors incur various
3 utility expenses; water, electric, gas, telephone, and internet
4 service. The average aggregate costs for these utilities
5 monthly is \$98,667 and a list of all of the utility providers
6 is attached to the motion as Exhibit A.

7 THE COURT: Okay. I've reviewed it. The only
8 observation that I had and I'm certainly happy to hear from
9 anybody, the only observation is that in my practice with
10 these, and I know it's been evolving with my colleagues and
11 courts in other jurisdictions, but my practice with this is,
12 what you're posting is 50 percent of a month, right?

13 MR. MELORO: Right.

14 THE COURT: Okay. And, you're actually going to post
15 that with each of the utilities, rather than setting up an
16 escrow?

17 MR. MELORO: Yes.

18 THE COURT: Okay. I want that posted within 20 days
19 of the entry of this order, rather than 20 days of the entry of
20 the final. I think that Section 366 has a substantial burden
21 on a debtor to provide adequate assurance and I think that it
22 needs to be done so promptly.

23 MR. MELORO: Okay.

24 THE COURT: Okay?

25 MR. MELORO: Would you like that included in the form

1 of order?

2 THE COURT: I would.

3 MR. MELORO: Okay.

4 THE COURT: Yes, you can hand mark it because I think
5 it says -- I haven't looked at the order, but the motion itself
6 says within 20 day of the final, you'll post that amount, and
7 it should just say within 20 days of this order.

8 MR. MELORO: Okay.

9 THE COURT: Okay. Does anyone else wish to be heard
10 regarding the utilities motion?

11 (No audible response)

12 THE COURT: Okay. Again, this is fairly standard
13 relief in this jurisdiction. The debtor is obligated to
14 provide adequate assurance to utilities holders pursuant to
15 Section 366 of the code, and the debtor has proposed an
16 adequate assurance deposit equal to two weeks service and that
17 proposal is without prejudice to the rights of a utility to
18 come to this court and to request additional adequate assurance
19 and we will schedule a hearing within the 30 day period. We'll
20 put this one on for the 30th of July as well. And so to the
21 extent that there are any issues with utilities, we will hear
22 them at that point. But otherwise, I will enter the order.

23 I think that brings us to insurance policies?

24 MR. MELORO: Yes, Your Honor. In the ordinary course
25 of their business, the debtors maintain numerous insurance

1 policies, providing coverage for, among other things, general
2 liability, workers' comp., property, automotive, D&O insurance.
3 Again a list of the policies is attached to the motion, and by
4 this motion the debtors are seeking authority to maintain their
5 existing insurance policies, to pay premiums and broker fees
6 under those policies, and also to continue with their insurance
7 premium financing programs.

These policies are essentially the debtors' businesses and exploring and obtaining alternative insurance would require the debtors to incur considerable additional expense. I would also note that the debtors are required under the U.S. Trustee guideline to maintain insurance.

13 The debtors are parties to two premium financing
14 agreements and I apologize, I believe it's an acronym, and not
15 pronounced that way, it's AICCO, Inc., and under the
16 agreements, the debtors make monthly payments, it's about
17 \$114,000 a month. The payment for July 1st -- it's due on the
18 first of the month and the payment for July 1st has been made
19 already. And we would also ask for authority to continue
20 making payments under these agreements.

THE COURT: Okay. Does anyone else wish to be heard regarding the insurance premium financing?

23 (No audible response)

THE COURT: Okay. I am going to grant that motion.

25 This is, again, fairly customary relief in corporate cases and

1 I do note that the debtor is obligated under the U.S. Trustee
2 guidelines and under principles of good stewardship to maintain
3 its insurance coverage. And to the extent, again, implicated
4 by the relief requested, I do find that the debtors have
5 carried their burden under Bankruptcy Rule 6003, and I'm
6 satisfied that this estate does run the risk of immediate and
7 irreparable harm in the absence of the relief requested in the
8 motion and I will grant the motion.

9 MR. MELORO: Thank you, Your Honor. At this point I
10 have completed my motion and I'll turn the podium over to Mr.
11 Kadish.

12 THE COURT: Okay. We're up to shippers and
13 warehousemen?

14 Mr. KADISH: We are, Your Honor, good morning, Allen
15 Kadish, Greenberg Traurig for the debtors.

16 This company has goods in transit today. Many of
17 those entities have liens and other protections that would
18 arise under state law. Essentially, Your Honor, we're asking
19 you to allow us to ransom and just simply pay the freight.
20 We've outlined in the motion the amounts at stake, we've
21 attached an exhibit that we think reflects pretty well from the
22 smallest. We have an entry here of \$100 to folks who we think
23 need to be paid. In an aggregate, the expenses, we think,
24 won't exceed \$350,000. We would rely on the Rayburn affidavit
25 and the record created this morning, that this is necessary to

1 continue operations as we move into the Chapter 11 period.

2 THE COURT: Okay. Does anyone else wish to be heard
3 regarding the shipping and warehousing motion?

4 (No audible response)

5 THE COURT: All right. I will grant the motion.

6 Again, with a company -- with a debtor that ships product or
7 inventory, this is fairly standard relief and as a threshold
8 matter, the Court does note and takes judicial notice of the
9 fact that under various state laws and other jurisdictions,
10 shippers and warehousemen may have priority liens on assets,
11 but the Court is also aware that as a practical matter, if you
12 don't pay most of these people, they will not release the
13 product, irrespective of what federal law may provide.

14 So, again, I do find that moving product in transit
15 is necessary to the ongoing life and health of this debtor and
16 to the extent implicated, I do find that the debtors have
17 carried their burden under Bankruptcy Rule 6003, in that if the
18 payments are not made, this debtor does suffer the risk of
19 immediate and irreparable harm, in that I have a measure of
20 confidence that the shippers and warehousemen will not release
21 product that the debtors are otherwise obligated to deliver to
22 other parties and customers. So, I will enter the order.

23 MR. KADISH: Your Honor, we'll hand up an order at
24 the end.

25 THE COURT: Okay.

1 MR. KADISH: The next motion we have is the customer
2 programs motion, which is docketed at number 12. We've tried
3 to give a good background in the motion here about the routine
4 customer programs that these debtors have on a daily basis in
5 order to run their business. They have warranty programs,
6 service agreements, rebate programs. They operate a website
7 and programs associated with that.

8 THE COURT: And so, these -- even though the debtors,
9 these debtors don't actually sell to end user customers, right,
10 this debtor sells to Target, or Circuit City or something like
11 that, right?

12 MR. KADISH: They have a small portion of the
13 business that is website driven to the individual consumer.

14 THE COURT: Okay. And are these, then, limited to
15 the folks that are buying through the website or buying directly
16 or do we honor -- or does the debtor honor through sales that
17 they make through Target and other entities?

18 MR. KADISH: This would, I think, proportionally run
19 to the customers who buy from the box stores and our
20 relationship with our immediate customers as well as to the
21 direct consumers, through the website.

22 THE COURT: Okay.

23 MR. KADISH: Your Honor, we've tried to describe in
24 some good detail in the motion, the estimates -- the programs,
25 and estimates. These are fairly small in the scheme of things

1 and the debtors believe necessary to their ongoing operations,
2 again, as we move into a Chapter 11 period and try to make sure
3 that all the folks these debtors deal with understand
4 management and directorship continues in place, operations
5 continue in place, and we're moving forward with our Chapter 11
6 process, hopefully, uninterrupted on a business level.

7 THE COURT: Okay. Does anyone else wish to be heard
8 regarding customer practices motion?

9 (No audible response)

10 THE COURT: Okay. I'm prepared to enter the relief
11 requested. Again, as a threshold observation I find that the
12 amounts are relatively modest but I do think that for this
13 debtor to maintain the value of its enterprise, it does need to
14 continue to honor those obligations which are clearly
15 expectations of its customers and its sort of supply chain
16 players as well, and that the disruption to the debtors'
17 operations and prospects caused by failing to honor these
18 grossly outweighs, again, the costs associated with continuing
19 to honor them. And, I'm satisfied from the Rayburn affidavit
20 and from my review of the motion that the debtors have carried
21 their burden that the debtors' estate and their prospects for
22 reorganization suffer risk of immediate and irreparable harm in
23 the event that they fail to continue to honor these.

24 More specifically, I'm satisfied that the debtors'
25 relationships with both end user customers and their primary

1 customers would be severely impacted, if not terminated if the
2 debtors suddenly stopped providing the warranty service that
3 parties have relied upon. So, based upon that, I'm satisfied
4 with the relief requested and I will enter the order.

5 MR. KADISH: Your Honor, the next motion on the
6 agenda is docketed at number 13, it's the debtors' motion for
7 authority to continue a letter of credit program which is
8 coordinated with Target, one of our key customers.

9 I think, Your Honor, one of the first issues that you
10 covered this morning was the true business of the debtors, what
11 they're really moving, commerce and how their business runs.
12 This flows exactly from that. We have a significant value in
13 play, on behalf of Target and the letter of credit program
14 supports production.

15 THE COURT: Wait. Let me make sure I understand it.
16 So, what happens is, Target places an order with you, you then
17 turn to a supplier to whom you need to make a substantial --
18 from whom you need to make a substantial order of parts, et
19 cetera, in order to -- basically, this is a guarantee of
20 payment for your supplier.

21 MR. KADISH: Exactly.

22 THE COURT: Okay.

23 MR. KADISH: And for us.

24 THE COURT: And for you because you get whatever
25 remains from the LC once they basically cash in the LC, right?

1 MR. KADISH: Exactly. And the letter of credit is
2 passed from Syntax-Brillian to the manufacturer and the amounts
3 are paid upon shipment and the Syntax-Brillian percentage or
4 profit, is passed through from the manufacturer to Syntax.

5 THE COURT: And is this, given the size of -- this is
6 where you get your money from your Target relationship, right?

7 MR. KADISH: This is it.

8 THE COURT: Okay. I saw an abundance of caution
9 language in the motion and it does seem to me that this seems
10 like an ordinary course. Granted, it's important, but it does
11 seem like an ordinary course transaction.

12 MR. KADISH: We think so, we also think that to
13 present the true operations of the business to the Court, to
14 the U.S. Trustee, to creditors, and to the folks outside the
15 courtroom, is enormously important in this case, at this time.

16 THE COURT: Okay. All right. Does anyone else wish
17 to be heard regarding the Target letter of credit motion?

18 (No audible response)

19 THE COURT: Okay. I'll grant the motion. I don't
20 actually believe that it contemplates or requires payment of
21 prepetition obligations, of the debtor. It seems to me that
22 the debtor has acknowledged that it's filing the motion in an
23 abundance of caution, at least from the record before me. And
24 again, I'm not making a final ruling on this but it seems to me
25 that this is substantially ordinary course continuation of a

1 business practice. I think it is appropriate that the debtor
2 has carefully and thoroughly disclosed it to the Court and to
3 the U.S. Trustee as well as, ultimately, to a committee, but I
4 am satisfied that the relief requested is reasonable and is
5 warranted under the circumstances and presumably it will make
6 life a little bit easier for the debtor to continue its
7 relationship with Target on a going forward basis and I assume
8 that's part of the basis for the motion, is that correct?

9 MR. KADISH: That is, Your Honor.

10 THE COURT: Okay.

11 MR. KADISH: Thank you.

12 THE COURT: All right. Then I will go ahead and
13 enter the order in the absence of any opposition. How are we
14 doing with the DIP?

15 MS. MITCHELL: Your Honor, Nancy Mitchell on behalf
16 of the debtors. I have the revised DIP order if I could
17 approach.

18 THE COURT: Okay. Give me just a moment to review
19 any changes.

20 (Pause)

21 THE COURT: All right. We'll have clerk's office
22 personnel in here momentarily to pick them up and they'll be
23 docketed in real time.

24 MS. MITCHELL: I would appreciate that, Your Honor.
25 The DIP cash management and the wage order. Did we give you

1 all of those?

2 THE COURT: The DIP, bank accounts --

3 MS. MITCHELL: Thank you very much, Your Honor, we
4 appreciate your assistance.

5 THE COURT: Okay.

6 MR. KADISH: Your Honor, last up, critical vendor
7 motion. Your Honor --

8 THE COURT: This one's got some hair on it.

9 MR. KADISH: This one's got some hair. It is --
10 well, first off, it's presented not as a critical vendor motion
11 that you might see in other cases that have lists and lists of
12 folks that are assumed to be paid, these are two and these are
13 part of our sale proposal.

14 We have made sure to take care of what would happen
15 if the relief today is not granted, but in order to proceed
16 today, let me put some background on the record.

17 The payment of prepetition claims of two entities is
18 proposed DigiMedia, 3 1/2 million, TCV, 2 million. Your Honor,
19 I don't think I need to go back and discuss again on the
20 record, I think we've made a record through the original
21 introduction that Ms. Mitchell presented, the Rayburn affidavit
22 and the discussion of the business and the Rayburn affidavit.

23 DigiMedia and TCV are two key suppliers. DigiMedia
24 is the R&D arm, the brain, of this company. TCV is a key
25 supplier whose has made the sole purchase offer, that's come up

1 with respect to this business.

2 I do have a proffer to make on behalf of Mr. Rayburn,
3 if the Court would like to hear that, if there are no other
4 issues before we start.

5 THE COURT: Okay. That would be fine.

6 MR. KADISH: All right. If called to testify, Mr.
7 Rayburn would testify to the following. Mr. Rayburn is the
8 debtors' interim chief executive officer, he has inquired of
9 counsel with respect to the standards to use in determining
10 whether to make payment, standards regarding payment of
11 essential vendors and he's been advised that there are
12 essentially four factors. Whether the essential vendors are a
13 sole source provider, whether quality requirements or other
14 specifications prevent the debtors from obtaining the goods or
15 services from alternate sources within a reasonable time frame.
16 Third, if the essential vendors are not a sole source provider,
17 whether the debtors can readily replace them, and fourth,
18 whether the vendors, if they meet the other standards of this
19 test, are likely to refuse or provide goods or services post
20 petition if the balances are not paid.

21 DigiMedia is headquartered in Taipei, Taiwan. It's
22 the third party provider of virtually all the technology,
23 research and development for the debtors' businesses.
24 DigiMedia is controlled by Mr. John Wu, that's W-u, indirectly,
25 through two of his affiliates and one family member. Mr. Wu

1 and his family also control TCV, which is our stalking horse
2 purchaser here.

3 THE COURT: One moment. Mr. Kadish, one moment
4 please.

5 MR. KADISH: Sure.

6 THE COURT: I'm sorry.

7 MR. KADISH: Your Honor, the Wu's control TCV and the
8 affiliate which is the designated purchaser Olevia
9 International Group, LLC.

10 THE COURT: I assume that's an acquisition vehicle,
11 right?

12 MR. KADISH: That's an acquisition company, yes. In
13 applying the criteria described above to determine whether
14 DigiMedia is a critical vendor, there are four conclusions.
15 DigiMedia provides critical services to the debtors, including
16 research and development for the Olevia brand name of digital
17 televisions, assistance in the manufacturing process,
18 performance of quality assurance engineering, quality control,
19 assistance with all new model startups, production planning and
20 allocation for manufacturing, purchasing sub-components for
21 televisions, supplying spare parts and sourcing and procuring
22 on behalf of contract manufacturers, most necessary components.

23 Conclusion two, there's no replacement vendor who can
24 provide these services because DigiMedia controls the
25 technology of the Olevia brand. Three, the debtors' ability to

1 compete effectively is dependent on having the technology
2 research and development that only DigiMedia provides, and
3 four, in the event the essential payment is not made, we
4 expect, though we have no assurance, that the proposed
5 purchaser will continue to support the business of DigiMedia
6 through the closing of the anticipated sale. In the event the
7 proposed purchaser elects not to support that business, the
8 value of the assets would be threatened.

9 The payments of DigiMedia, essentially, are intended
10 to allow DigiMedia to fund secondary suppliers. Your Honor has
11 heard about the way this business functions, if the payments to
12 DigiMedia are not paid, the risk is that those secondary
13 suppliers may not support DigiMedia.

14 As to TCV, Mr. Rayburn would testify that TCV is an
15 independent company that provides the debtors with essential
16 plastic casings for televisions and with finished televisions.
17 TCV controls the proposed stalking horse purchaser. Again, TCV
18 is controlled by Mr. Wu and his family. In applying the four
19 factor test, TCV provides virtually all the plastic casing for
20 the debtors' televisions. In the event the debtors had to
21 replace TCV, the debtors would be unable to manufacture
22 televisions under pending orders. In the event the essential
23 vendor payment to TCV is not made, we expect, but we have no
24 assurance that TCV will continue to provide goods and services,
25 however, in the event the proposed purchaser elects not to

1 support that business, the value of the business is threatened.

2 As to both essential vendors, Mr. Rayburn would
3 testify that it's a condition of the proposed purchaser's offer
4 to purchase the assets of the debtors, that the debtors make
5 this motion. To the extent the two claims are not paid, the
6 purchase price for the debtors' assets under the asset purchase
7 agreement will be reduced in a corresponding amount.

8 The payment of these two essential vendor claims has
9 been calculated into the debtors' budget under the DIP
10 financing and the debtors' proposed post petitioner lender has
11 agreed to lend funds sufficient to pay the amounts proposed to
12 be paid here.

13 Your Honor, that would conclude Mr. Rayburn's proffer
14 on the critical vendor motion.

15 THE COURT: Okay. Anyone else wish to be heard
16 regarding critical vendors? Mr. Kenney?

17 MR. KENNEY: Good morning, Your Honor. Again, for
18 the record Mark Kenney for the United States Trustee. Your
19 Honor, I would like to cross examine Mr. Rayburn on a couple of
20 points of his proffer.

21 THE COURT: Okay. Before we do that, I'd like to
22 take a very short break. Let me make a couple observations,
23 though, on this one and I was, perhaps, flip when I said this
24 one's got some hair on it. But I don't think it's any secret
25 that this is a complicated issue. Critical vendor motions, a

1 debtor seeking authority to pay a critical vendor carries a
2 substantial burden, not just under Rule 6003 but as a practical
3 matter under our established case law. And in this case we
4 have an individual identified throughout the papers as having a
5 substantial role with the purchaser as well as with DigiMedia
6 and according to footnote four of Mr. Rayburn's affidavit, on
7 Page 23, indeed Mr. Wu was also a substantial equity holder of
8 the debtor, which makes this whole exercise somewhat
9 complicated and calls into question or raises the issue that's
10 not before me today, in connection with the sale process and
11 the, perhaps overweening leverage and good faith in the
12 negotiations of the sale agreement itself. Now that's not
13 before me today. But as a practical matter, what I see is, I
14 have a party that is proposing to buy. I didn't see and,
15 again, I just flipped through the sale agreement, that is not
16 before me today, but it doesn't seem that there's actually new
17 money coming in with the sale agreement, but if I'm mistaken
18 about that, somebody can correct me.

19 And, again, that party is seeking payment of critical
20 vendor obligations on two separate entities that he's familiar
21 with or that he controls and whether or not that's something
22 that is appropriate to be done on day one is, I think, an
23 appropriate basis for inquiry by the Office of the United
24 States Trustee and it's something that, again, I'm not
25 prejudging the issue, but my instincts would be that this is an

1 issue that I think a committee should have a meaningful
2 opportunity to weigh in on. That's a factor that applies,
3 though, with every single critical vendor motion and I'm not
4 prejudging it.

5 Let me also say that I understand, at least as best I
6 can from the papers that have been submitted, the circumstances
7 under which this debtor is trying to prosecute its case, and we
8 are where we are. So, with those short observations, we're
9 going to take a 15 minute break and then Mr. Kenney, if you
10 wish, you may begin your cross examination when we reconvene.

11 MR. KENNEY: Thank you, Your Honor.

12 THE COURT: Are there any questions?

13 (No audible response)

14 THE COURT: We stand in recess. Mr. Meloro, may I
15 have the other orders? We stand in recess.

16 (Short break in proceedings)

17 THE COURT: Please be seated. Okay, ready to
18 proceed?

19 MR. KENNEY: Yes, Your Honor, I'd like to cross
20 examine Mr. Rayburn.

21 THE COURT: Okay. Mr. Rayburn. Swear the witness.

22 COURT ATTENDANT: Raise your right hand, place our
23 left hand on the Bible.

24 GREGORY RAYBURN, DEBTORS' WITNESS, SWORN:

25 COURT ATTENDANT: Please state your full name for the

1 record and spell it.

2 THE WITNESS: Gregory Franklin Rayburn, G-r-e-g-o-r-y
3 F-r-a-n-k-l-i-n R-a-y-b-u-r-n.

4 COURT ATTENDANT: Please be seated.

5 THE WITNESS: Thank you. Your Honor, either before
6 this or after, I'd like to make some clarifying remarks
7 regarding the Wu family's interest in DigiMedia because I think
8 the record is not all that clear.

9 THE COURT: Well, let's do this, and Mr. Kenney, I'll
10 leave it to you. If you wish, I'm happy to have him address
11 the issues on direct. I've accepted the proffer, you're
12 welcome to cross examine right now.

13 MR. KENNEY: Your Honor, if it may shed light on his
14 proffer, then it may be appropriate for him to give us that
15 clarification now.

16 THE COURT: Why don't we do that through direct,
17 okay?

18 MR. KENNEY: Yes. Mr. Rayburn --

19 THE COURT: Actually, we'll have him do that.

20 MR. KENNEY: You want to do that first?

21 THE COURT: Yes, Mr. Kadish can ask him a couple
22 questions perhaps to clarify and then we'll turn to the cross
23 examination.

24 MR. KADISH: Your Honor, thanks.

25 DIRECT EXAMINATION

1 BY MR. KADISH:

2 Q Mr. Rayburn, did you want to clarify or add to the proffer
3 that was made before?

4 A Yes, please. To give the Court some background on the
5 transaction that's proposed and the involvement of the Wu
6 family, specifically with DigiMedia, I wanted to make a couple
7 of clarifications because I think it's possible that the Court
8 maybe has read into this something different than actually
9 exists factually.

10 I was the one who proposed to the Wu family that they
11 make this acquisition, so they were not actively seeking to be
12 a purchaser of Syntax-Brillian. And, as part of that, I was
13 also, as CEO, trying to solve for the problem which we've
14 already stated, which is that DigiMedia, in addition to
15 controlling our R&D is also a production facility and as of the
16 time that I've been involved with this case over the past 90
17 days, they are, in fact, the only production facility currently
18 operating for sizes other than 42 inch televisions. Comtel has
19 a line to make 42 inches, but DigiMedia itself, can make the
20 other sizes and has been making them pursuant to the Target
21 LC's that we've been receiving.

22 And the reason that this was an issue was not only to
23 find a buyer who could solve that problem, but also we were in
24 weekly sort of conflict and dialogue with our lender, as to
25 whether they would continue to fund DigiMedia through us and

1 that funding would require paying DigiMedia's payroll and
2 continuing to make payments so that they could pay secondary
3 suppliers to get critical component parts.

4 What we ended up agreeing to do and what the Wu
5 family did, because at that time they had a very small
6 interest, they had a 10 percent interest in DigiMedia and they
7 only had that interest because the Wu family, through a
8 construction company, actually built their building and they
9 took the 10 percent interest as part payment from four years
10 ago from building the building. So, they are not a meaningful
11 shareholder of DigiMedia at any point in time, other than
12 within the last four weeks. And, it was because we convinced
13 them and persuaded them to do the transaction with Syntax-
14 Brillian.

15 We also persuaded them to increase their equity
16 ownership to 51 percent in DigiMedia which they've come out of
17 pocket to do over the past four weeks and also as of about four
18 weeks ago, they took over the funding of payroll for DigiMedia
19 as part of that, and also the payments to some of the supply
20 base.

21 So, that's really the factual sequence of events.
22 This transaction when -- you made a comment earlier about cash
23 coming in, for this buyer, this is roughly a \$200 million
24 investment of cash. There is an assumption of debt but they
25 have to provide cash currently and in the past few weeks, to

1 DigiMedia for those operations and they currently do that now,
2 so they relieve the debtors from having to do that. They have
3 to provide roughly \$45 million of new capital for working
4 capital for Syntax-Brillian. They have to provide -- they're
5 also acquiring the controlling interest in Manjin, which is a
6 production facility that we had a part ownership in.
7 So, among other things, there's a significant outlay of cash
8 involved in this from TCV.

9 From the beginning of our negotiations, these
10 critical payments were up front, they were up front about the
11 need as part of the transaction to make this payment to
12 DigiMedia. That money does not go to TCV, that money goes
13 straight to secondary suppliers who are supplying critical
14 parts and if we don't get those critical parts we will not be
15 able to produce televisions under the Target orders and we will
16 lose our only large customer that we have left.

17 And, the TCV payment also was on the table at the
18 very front end of this deal, was always part of this and, Your
19 Honor, there is a cultural issue here with respect to the
20 vendors and payments to vendors in this that I've had to learn
21 the hard way, but if you actually look at what they've done,
22 part of this for TCV has been to try to stabilize the supply
23 chain in Asia for Syntax-Brillian, and clearly they could have
24 done this more cheaply, they could have let DigiMedia go
25 bankrupt. I actually suggested that, and that would have

1 relieved the burden of a lot of the old payables, but they've
2 chosen not to do that. Part of that is cultural, part of that
3 is what they've committed to do in Asia, on behalf of Syntax
4 and I just wanted to make those clarifying comments because I
5 didn't want this to start off down a path that was maybe --
6 didn't actually fit with that factual background.

7 THE COURT: Very well. Mr. Kadish, do you have
8 anything else?

9 Q Anything else you want to add?

10 A No, thank you. Thank you for not leading the witness.

11 THE COURT: That's fine. Mr. Kenney, if you'd like a
12 few moments to incorporate his comments into your cross, I'm
13 happy to give you a break, or if you want to start, you can
14 start.

15 MR. KENNEY: I'm ready to proceed, Your Honor,

16 THE COURT: Very good, begin.

17 CROSS EXAMINATION

18 BY MS. KENNEY:

19 Q Mr. Rayburn, my understanding is that if these two
20 critical vendor payments aren't made today, they would be made
21 as adjustments to the purchase price?

22 A I think that's the construct, yes.

23 Q Okay. Now, is there any possibility, is it a make or
24 break for the company, that these things be paid today, as
25 opposed to at the end of July, after the final DIP hearing?

1 A I think there's a lot at risk, yes, because, again, it's
2 not specifically when you look at DigiMedia these are payments
3 that would go to get current parts for current production and,
4 frankly, they are the payments that we would make even in a --
5 probably in a liquidating scenario, because they are value add
6 by converting those parts to televisions for profitable sales
7 to a customer.

8 Q You're saying this, essentially, is not so much a
9 DigiMedia or TCV issue as an issue with DigiMedia's and TCV's
10 suppliers?

11 A Correct.

12 Q Given the investment that TCV has already made in
13 acquiring DigiMedia, is this something, and given the fact that
14 they've provided for a purchase price adjustment if it's not
15 made, is TCV or the Wu family unable to fund this in the
16 interim?

17 A I don't know if I can say that they're unable to, I think,
18 you know, again, I can only tell you from my perspective as
19 having negotiated this transaction, that part of their
20 investment thesis all along has contemplated the payment of
21 those funds and I know that they have made commitments to those
22 secondary suppliers at DigiMedia, that those would be paid and
23 that they would be paid today, or paid at the onset of the
24 filing and that was part of their commitment when they started
25 vying at the equity and assuming the other liabilities.

1 Q Now, if I understand it, the Wu family, essentially
2 through acquiring the interest through their ownership of TCV,
3 their interest in DigiMedia, I think you said they were buying
4 up part of is it Nonjin (phonetic)?

5 A Manjin.

6 Q Manjin. And, their acquisition of the assets of this
7 debtor, there is -- I guess they will essentially own an
8 integrated manufacturing enterprise at the end of it and they
9 would have incentives to do what is necessary to complete that
10 acquisition?

11 A I'm not sure what you're asking me. They have -- they're
12 clearly making a substantial commitment of funds to create a
13 fully integrated, fully vertically integrated tier 2 provider
14 in the space that doesn't currently exist. I think that,
15 again, part of the transaction and part of the negotiations
16 with them were that these two critical supplier units be made,
17 so I'm not sure what you're asking me with respect to their
18 incentive.

19 Q Well, in terms of their incentives, they're making this
20 acquisition so that they can -- they'll own the tier -- they'll
21 own a basically integrated tier 2 supplier and they're going to
22 be stepping into a market here where there is the debtors'
23 existing tier 2 market.

24 A Correct.

25 Q So that they're basically -- this is a complete going

1 concern acquisition where they're basically acquiring not only
2 manufacturing capabilities but a customer base simultaneously.
3 A Well, just let me -- going concern, I mean, I guess I
4 would clarify that a little bit. I mean, the debtors'
5 businesses at one point were, I think, a roughly \$700 million
6 revenue business. The debtors currently are operating at maybe
7 10 percent of that volume. And so what they're buying is
8 basically one or two customer relationships that continue to
9 exist and that continue to be supported by a customer that's
10 willing to post LC's, to guarantee the supply chain payments,
11 but they have to rebuild that business, so the 45 million of
12 working capital funding is the estimate that we came up with of
13 what we think it will require to be basically rebuilt, the
14 order volumes to a level that will allow Syntax-Brilliant to be
15 a profitable entity. So, it's a very -- it's a sizeable
16 commitment and it's also a relatively risky commitment from
17 their perspective. And I just want to clarify that because you
18 made it sound like they're sort of stepping into a live
19 operating going concern. They're stepping into a very damaged
20 business on the hopes that they can rebuild that and rebuild
21 those customer relationship.

22 Q As I understand it, TCV had already provided that if these
23 critical vendor payments are not made, you'll simply make
24 purchase price adjustment.

25 A I don't know -- if they do that, that's fine, but I don't

1 know that that solves the problem and I guess that's my largest
2 concern. I don't know that a purchase price adjustment on the
3 back end will get secondary suppliers paid and will get
4 critical parts shipped and will allow us to make the sales to
5 Target.

6 Q And, you don't know if TCV, given its own interest in
7 DigiMedia and, of course, in itself you don't know anything
8 about their ability to fund their own operations in the
9 interim?

10 A It's always easy for me to spend other people's money, so
11 I could conjecture that they have -- if the question is, do
12 they have money, I think they have money, I think that this
13 investment, though, has been a very heavily negotiated
14 investment and these two critical vendor payments were part of
15 that, so it's part of the package. I don't know that it's
16 relevant whether I think they have money or not.

17 Q Well, it may be relevant in that if they have the ability
18 to fund it or if we're not sure that those suppliers would
19 actually cut it off, the payment may, in fact, not be critical.

20 A Well, I guess that's true but that's the same as saying
21 that I could have alternatively just convinced them to pay \$5
22 million more in the purchase price a couple of weeks ago, and I
23 wasn't able to do that, so I don't know why we would -- were
24 able to convince them to fill the hole now.

25 MR. KENNEY: I have no further questions, Your Honor.

1 THE COURT: Redirect?

2 MR. KENNEY: Make argument.

3 MR. KADISH: Two questions, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. KADISH:

6 Q Mr. Rayburn, one. If these folks were not our stalking
7 horse buyer, would we still be here today asking for critical
8 vendor relief with respect to these two suppliers?

9 A Yes.

10 Q Why?

11 A Because we need the parts. We need the televisions, we
12 have to -- I mean, Syntax if you go back through the history of
13 the company, it's a very odd situation. It is one of the few
14 that I've seen that did not have an issue of demand, did not
15 have declining demand in the business. It had demand that it
16 tried to meet, that it could never meet, it was never
17 capitalized well enough, or structured correctly, to meet what
18 I would say is very exorbitant demand for televisions, and
19 they're quite good televisions. So, the issue has always been,
20 you know, how do you keep the supply chain going and that takes
21 money.

22 Q Anything else?

23 A No, sir.

24 THE COURT: Any recross Mr. Kenney?

25 MR. KENNEY: No, Your Honor.

1 THE COURT: All right, you may step down, sir.

2 THE WITNESS: Thank you.

3 THE COURT: Anyone else wish to be heard regarding
4 the critical vendor motion?

5 MS. CADEMARTORI: Your Honor, this is Malani
6 Cademartori for the TCV Group, from Sheppard Mullin. I just
7 wanted to clear up one thing that came up with respect to this
8 motion, which is the interests of Michael Wu in the debtors.
9 In fact, Michael Wu holds no interest in the debtors at this
10 time at all.

11 THE COURT: The affidavit does not say that Michael
12 Wu owns any interest in the debtor. It says that John Wu owns,
13 or owned common stock in the debtor.

14 MS. CADEMARTORI: I just wanted it to be clear, Your
15 Honor.

16 THE COURT: Okay. I don't know who Michael Wu is.

17 MS. MITCHELL: I think he would be John Wu's son.

18 MR. MELORO: They're father and son.

19 THE COURT: I figured. Okay. Does anyone else wish
20 to be heard regarding the motion? Okay. Mr. Kenney?

21 MR. KENNEY: Your Honor, given the fact that a
22 provision was built into the stalking horse agreement,
23 providing for a purchase price adjustment if the critical
24 vendor payment weren't made, I think is an indication that TCV
25 is contemplating at least the possibility of that critical

1 vendor payment not being authorized today, and I would think
2 that given its level of investment so far, they probably have
3 the ability to continue those operations without this critical
4 vendor payment. I have a substantial concern, Your Honor, that
5 if this payment is made today, what if this transaction doesn't
6 close? This would sort of be the equivalent of collecting the
7 engagement ring and then not showing up at the altar.

8 THE COURT: I'm not going to carry that analogy any
9 further.

10 MR. KENNEY: Or maybe you should be taken out and
11 shot, Your Honor, but the point is, if the money leaves the
12 estate today, that money is gone. If the transaction doesn't
13 close that money is gone and there may be no way to recover it,
14 and there may not be a commensurate benefit to the estate for
15 making that payment. And I think as long as there is the
16 possibility of these suppliers continuing to supply based on
17 the promise that they're going to get this payment, either when
18 the transaction closes or possibly even after entry of the
19 final DIP order, after the committee has had an opportunity to
20 look at it.

21 I think that basically puts -- posits it such that
22 it's really an issue of timing, not of whether the payment will
23 be made and I think that if we can break it down to the issue
24 of when it's really only one of timing that I think people will
25 wait for it, if they know that it is an issue of timing not

1 whether or not the money will be there.

2 THE COURT: Okay. Mr. Kadish?

3 MR. KADISH: Your Honor, just briefly. I don't think
4 I can do better than the interim CEO, who is trying to -- who
5 is taking control of this business and steering away forward,
6 but just a couple of points. One that's he's reminded me of,
7 is that the purchaser is posting a \$5 million deposit that will
8 be lost if they walk away. Point two, I think Mr. Rayburn has
9 adequately established that these payments would have to be
10 made if there were no purchase -- if there were no stalking
11 horse bidder, or if these folks were not that bidder, risking
12 the supply of parts, especially now is more than potentially
13 damaging to the business, but risks putting a stop and we have
14 no assurance that suppliers will supply and that TCV will come
15 to the rescue pending a transaction.

16 THE COURT: Okay. Anyone else wish to be heard?

17 (No audible response)

18 THE COURT: Okay. Regarding the motion, here's what
19 we're going to do. I will grant the motion in part and I will
20 adjourn the motion in part. I appreciate Mr. Rayburn's
21 clarification and, again, I accept the proffer and the
22 testimony that was elicited on cross examination that clarified
23 some of the Court's understandings, about the nature of this
24 transaction and, again, I don't mean to be flip, I understand
25 the circumstances under which these kind of negotiations occur.

1 I will permit and authorize the critical vendor
2 payment as it relates to DigiMedia. I'm satisfied that the
3 record developed before me today justifies and warrants those
4 payments in order to keep the business up and running and
5 operating and, again, I note and accept the clarification from
6 Mr. Rayburn about how TCV and/or the Wu family became involved
7 in DigiMedia, which gives me a little bit more full sense of
8 how the transaction is being structured and has come together.
9 So, I'm comfortable with the prospect that those payments will
10 be made and should be made, in the amount of \$3.5 million as
11 requested.

12 With respect to the request for a payment to TCV, I
13 will adjourn that to our hearing on the 30th of July. And,
14 again, I accept and consider the comments of Mr. Rayburn
15 regarding TCV's role in this and accept that these are all
16 items and pieces of negotiation. This is clearly a complex
17 transaction that I look forward to getting a better handle on
18 in due course.

19 And, the one point I want to make is that while I
20 don't want to appear to penalize TCV for agreeing to
21 participate as a stalking horse, and I don't necessarily
22 dispute the witness' testimony that TCV would be, in the
23 absence of this transaction, they would be a critical vendor
24 because of the nature of their relationship, and I don't rule
25 on that because those aren't the facts that are before me, but

1 I want it to be clear that I'm not penalizing them for their
2 agreement to participate in this process on a going forward
3 basis, but as the proposed buyer and as the beneficiary of a
4 proposed critical vendor payment, I am satisfied at least for
5 the interim period, that there is a substantial motivation and
6 that TCV has shown good faith in its negotiations and its
7 willingness to participate in this process and to move forward
8 with a sale process. And so, I'm -- but I believe that the
9 question of whether or not a critical vendor payment to them
10 should be paid is something that should be held off, not for
11 the first day, but for very early stages in the case. So, I
12 will carry that to the 30th.

13 And in so ruling, I am not making any observation
14 about whether or not they are or are not a critical vendor, but
15 given their role in the case, the other point I'd make and,
16 again, I'm not penalizing them for it, but it is part of the
17 showing and part of the evidentiary burden that I have to find,
18 is that I find that this is a committed player that is
19 interested in moving forward in this industry and so,
20 consistent with the trustee's observations and comments on
21 cross examination, it is my hope and my expectation that the
22 adjournment of the critical vendor payment won't impair the
23 stalking horse purchaser's interest in the transaction, over
24 the course of the next three weeks.

25 So, they've placed themselves in a somewhat different

1 situation than a routine critical vendor whose primary leverage
2 is simply to walk away. And that's a good thing. Again, I
3 don't want them to perceive that they are being penalized for
4 that. But I think under the circumstances, that allowance of
5 the critical vendor payment to DigiMedia is warranted and
6 appropriate and I will approve that today. But the TCV matter
7 should be presented to the Court on a more full record. And I
8 think at the hearing on the 30th, we'll be dealing with the
9 sale process, we'll be dealing with their proposal, we'll be
10 dealing with anything that a committee also has to say, and so
11 I think that we can do that then and I don't think it's
12 appropriate to do that today, based on the record that we have.

13 MR. KADISH: We'll submit a -- we'll mark up an order
14 and submit it later on.

15 THE COURT: Okay.

16 MR. KADISH: Your Honor, can we -- are we done with
17 critical vendor?

18 THE COURT: I believe, yes.

19 MR. KADISH: I just wanted to make one scheduling
20 note. We talked about the sale and bid procedures motion, that
21 we would be back on the 30th.

22 THE COURT: Right, at 11 a.m.

23 MR. KADISH: At 11 a.m. on bidding procedures. We'll
24 notice that out, again, in the next couple of days and we'll
25 use the same objection date as with respect to the DIP.

1 THE COURT: Right. Let me ask you one question.
2 Today is the 9th, why don't we treat that hearing on the 30th?
3 You've got your final DIP, you'll have the sale and bidding
4 procedures and I'm happy to entertain the TCV critical vendor
5 issue, but why don't we -- I'd prefer that we, perhaps, not
6 treat that as your routine second day with all the retentions
7 and anything else you may need to put on, because you may not
8 get them all filed within the next day or so, to have them on
9 timely. I'd be happy to schedule an omnibus hearing in the
10 week of August 4. That would give you an opportunity to put
11 more routine matters on because, again, I don't want to have to
12 deal with the typical collection of motions. We've got some
13 important things that we'll need to focus on, on the 30th.

14 MR. KADISH: That's fine, Your Honor. Should we
15 contact chambers for a date and time?

16 THE COURT: Yes. Why don't you contact chambers
17 after you have a chance to talk with your lenders and any other
18 interested party for what would be a routine date. And,
19 actually, Mr. Meloro, you can get in touch with chambers and
20 we'll give you dates for omnibus hearings throughout the next
21 couple of months.

22 MR. KADISH: Thank you very much, Your Honor.

23 THE COURT: All right.

24 MR. KADISH: I think we're done.

25 THE COURT: So, I have -- also I just received a note

1 that the financing order and the wages order and the cash
2 management orders are all on the docket at this point. If you
3 need certified copies for any purpose, you can get them on the
4 third floor, at the clerk's office.

5 MR. KADISH: Thank you. We've received electronic
6 notification and they're already in works.

7 THE COURT: Okay. Is there anything further?

8 MR. KADISH: That's it, I think. Thank you very
9 much, Your Honor.

10 THE COURT: Very well, we'll stand in recess. Thank
11 you, counsel.

12 * * * * *

13 **C E R T I F I C A T I O N**

14
15 I, ELAINE HOWELL, court approved transcriber, certify
16 that the foregoing is a correct transcript from the official
17 electronic sound recording of the proceedings in the
18 above-entitled matter and to the best of my ability.

19

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21

22 /s/ Elaine Howell

Date: July 15, 2008

23 ELAINE HOWELL

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